15-401

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No 253.

CHARLES HAUSELT AND CHARLES KORN, PLAINTIFFS IN ERROR,

vs.

JEFFERSON HARRISON, ASSIGNEE IN BANKRUPTCY OF EDWARD BAYER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

FILED SEPTEMBER 20, 1879.

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1 UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

[SEAL.] Among the records and proceedings of the circuit court of the United States for the western district of Pennsylvania, at Williamsport, it is, inter alia, thus contained at No. 27, June term, A. D. 1875.

Appearance docket entry.

JEFFERSON HARRISON, ASSIGNEE IN BANKRUPTCY of Edward Bayer,
vs.
CHARLES HAUSELT AND CHARLES KORN.

Summons in replevin for six thousand tanned veal skins, six thousand tanned kip skins, six thousand tanned and partly-finished veal skins, six thousand tanned and partly-finished kip skins, six thousand
2 tanned and finished veal skins, and six thousand tanned and finished kip skins, and one hundred cords of hemlock bark, all of the value of twenty-five thousand dollars, issued February 20th, 1875, returnable the first Monday of April next.

Præcipe filed February 20, 1875.

February 24, 1875, replevied as within commanded 360 tanned and finished calf skins, (3,720) thirty-seven hundred and twenty tanned and partly-finished calf skins, (3,820) thirty-eight hundred and twenty tanned calf skins, and delivered the same to the defendants, property bond being entered. Also replevied one hundred cords hemlock bark, and delivered the same to the plaintiffs, defendants disclaiming property in said bark, and summoned the defendant Charles Korn by giving him a true and attested copy of the within, and him of the contents thereof. The said defendant Charles Hauselt accepting service of the within writ, by his attorney, Frederick E. Sherer. So ans. John Hall, U. S. marshal, by David Cameron—$17.60.

Narr. in replevin filed April 3, 1875. Replevin bond and claim property bond filed April 3, 1875.

3 And now, April 8, 1875, Armstrong & Linn appear for the above-named defendants, reserving all exceptions.

Appearance filed April 9, 1875.

April 3, 1876, plaintiff, by his attorney, enters rule on def'ts to plead within one month or judgment as per rule filed. Same day plea of defendants filed, "non cepit and property."

And now, April 3, 1876, defendants, by Armstrong & Linn, their attorneys, enter rule on plaintiff to file replication or judgment, sec. reg., exit copy.

Replication filed April 21, 1876.

May 4, 1876, filed notice and order for trial at June term, 1876.

June 20, 1876, continued, at cost of plaintiff.

And now, June 21, 1878, a jury of the county being called, came, to wit, George M. Spaulding, Clement Dale, E. W. Caldwell, William A. Brady, Jeremiah Crouse, Samuel Alleman, Frank Flosser, Wm. McClelland, James C. Williams, K. Packard, P. D. Bricker, and Wm. Thompson, twelve good and lawful men of the western district of Pennsylvania, who having been duly summoned, returned, balloted for, and empanelled, were severally sworn to try the issue herein joined, do say, June 25, 1878, that they find in favor of the plaintiff and

4 against Charles Hauselt, one of the defendants, the sum of fifteen thousand eight hundred dollars ($15,800.00).

June 25, 1878, plaintiff's bill of costs, amounting to $117.50, filed.

June 26, 1878, motion and reasons for a new trial read in open court and ordered to be filed per cur.

And now, March 26, 1879, the motion for a new trial in this case is dismissed and judgment upon the verdict is ordered by the court, W. McK.

Whereupon it is considered and adjudged by our said circuit court of the United States that the said plaintiff do recover against the said Charles Hauselt his said debt of fifteen thousand eight hundred dollars, and also the sum of one hundred and sixty-six dollars and seventy cents for his costs and charges in this behalf expended, which said debt, costs, and charges in the whole amount to the sum of fifteen thousand nine hundred and sixty-six $\frac{70}{100}$ dollars ($15,966.70).

And the said defendant in mercy, &c.

Judgment signed March 26, 1879.

B. S. BENTLEY, JR.,
Clerk.

5 April 14, 1879, filed bond of Charles Hauselt, principal, with Matthew Armstrong and David Wallerstein, sureties, in the sum of five hundred dollars, conditioned for prosecuting writ of error taken in this case to the Supreme Court of the United States with effect, &c. Same day bond approved as follows:

It appearing by the receipt of the plaintiff, dated March 29, 1875, that the defendant deposited with the National Park Bank of New York City six hundred shares of the stock of said bank as security for whatever sum might be recovered in the within-stated case, which security was accepted as sufficient by the plaintiff, and is now held by him, the within bond is, therefore, approved as a supersedeas of execution in the judgment.

W. MCKENNAN, *Cir. Judge.*

April 14, 1879, writ of error issued. Same day exit citation to Jefferson Harrison, assignee in bankruptcy of Edward Bayer, to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October, 1879, to
6 show cause, if any he has, why the judgment in said writ of error mentioned should not be corrected, &c.

April 14, 1879, service of citation accepted by Henry C. Parsons, attorney for Jefferson Harrison.

August 14, 1879, filed testimony and charge of court. Same day filed bill of exceptions and specifications of error.

7 *Præcipe.*

In the circuit court of the United States for the western district of Pennsylvania.

JEFFERSON HARRISON, ASSIGNEE IN BANKRUPTCY of Edward Bayer, plaintiff,
vs.
CHARLES HAUSELT AND CHARLES KORN, defendants.

Issue writ of replevin for six thousand tanned veal skins, six thou-

sand tanned kip skins, six thousand tanned and partly-finished veal skins, six thousand tanned and partly-finished kip skins, six thousand tanned and finished veal skins, and six thousand tanned and finished kip skins, and one hundred cords of hemlock bark, all of the value of twenty-five thousand dollars, the property of Jefferson Harrison, assignee in bankruptcy of Edward Bayer, which have been seized and unjustly detained by the said Charles Hauselt and Charles
8 Korn. Returnable on the first Monday of April, A. D. 1875.

M. F. ELLIOTT,
Att'y for Pl'ff.

To HEPBURN MCCLURE, *Clerk.*

FEB'Y 20, 1875.

(Endorsed:) No. 27, June term, 1875. Jefferson Harrison, assignee in bankruptcy of Edward Bayer, vs. Charles Hauselt and Charles Korn. Præcipe. Filed Feb'y 20, 1875.

9 *Summons.*

UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

[SEAL.] The President of the United States to the marshal of the western district of Pennsylvania, greeting:

If Jefferson Harrison, assignee in bankruptcy of Edward Bayer, plaintiff, make you secure of prosecuting his claim against Charles Hauselt and Charles Korn, defendant, late of your district, then we command you that to the said Jefferson Harrison, assignee in bankruptcy of Edward Bayer, as aforesaid, six thousand tanned veal skins, six thousand tanned kip skins, six thousand tanned and partly-finished veal skins, six thousand tanned and partly-finished kip skins, six thousand tanned and finished veal skins, and six thousand tanned and finished kip skins, and one hundred cords of hemlock bark, all
10 of the value of twenty-five thousand dollars, the property of Jefferson Harrison, assignee in bankruptcy of Edward Bayer, which have been seized and unjustly detained by the said Charles Hauselt and Charles Korn, to be replevied and delivered you cause, and that you put by securities and safe pledges the said Charles Hauselt and Charles Korn so that they be and appear before the judges of the circuit court of the United States in and for the western district of Pennsylvania, in the third circuit, at a session of the same court to be holden at Williamsport, on the first Monday of April next, to answer Jefferson Harrison, assignee in bankruptcy of Edward Bayer, as aforesaid, of a plea wherefore they, the said Charles Hauselt and Charles Korn, took the goods and chattels aforesaid, and the same unjustly detain against sureties and pledges, &c. And have you then and there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Williamsport, this
11 twentieth day of February, A. D. one thousand eight hundred and seventy-five, and in the ninety-ninth year of the Independence of the said United States.

HEPBURN MCCLURE, *Clerk.*

(Endorsed:) No. 27. June term, 1875. Jefferson Harrison, assignee in bankruptcy of Edward Bayer, vs. Charles Hauselt and Charles Korn. Summons in replevin. M. F. Elliott.

12 February 24th, 1875, replevied as within commanded (360) three hundred and sixty tanned and finished calf skins, (3,720) thirty-seven hundred and twenty tanned and partly-finished calf skins, (3,820) thirty-eight hundred and twenty tanned calf skins, and delivered the same to the defendants, property bond being entered; also replevied one hundred cords hemlock bark and delivered the same to the plaintiff, defendants disclaiming property in said bark; and summoned the defendant Charles Korn, by giving him a true and attested copy of the within, and him of the contents thereof. The said defendant Charles Hauselt accepting service of the within writ, by his attorney, Frederick E. Sherer.

So answers—

JNO. HALL,
U. S. Marshal West. Dist. Penn'a,
By DAVID CAMERON.

Sworn & subscribed before me M'ch 30, '75.

H. W. WILLIAMS,
Pres. Judge 4 Dist Pa.

Travel on within writ 136 miles, @ 10 c	13 60
Service on 2, @ $2	4 00
	$17 60

13 Service accepted on the within summons for Charles Hauselt, one of the defendants.

FREDERICK E. SCHERER,
Act'g for Charles Hauselt.

TIOGA, *Feb'y* 24, '75.

Narr. in replevin.

In the circuit court of the United States for the western district of Pennsylvania, of the term of June, in the year of our Lord one thousand eight hundred and seventy-five.

WESTERN DISTRICT OF PENNSYLVANIA, *ss:*

Charles Korn and Charles Hauselt were summoned to answer Jefferson Harrison, assignee in bankruptcy of E. Bayer, of a plea wherefore he took the goods and chattels of the said Jefferson Harrison, assignee, &c., of E. Bayer, and unjustly detained the same against gages and pledges, until, &c., and thereupon the said Jefferson Harrison, assignee, in bankruptcy of E. Bayer, by M. Elliott, his attorney, complains
14 that the said Charles Korn and Charles Hauselt heretofore, to wit, on the nineteenth day of February, in the year of our Lord one thousand eight hundred and seventy-five, at the district aforesaid, took the goods and chattels of him the said Jefferson Harrison, assignee, &c., of E. Bayer, to wit, six thousand tanned veal skins, six thousand tanned kip skins, six thousand tanned and partly-finished veal skins, six thousand tanned and partly-finished kip skins, six thousand tanned and finished veal skins, and six thousand tanned and finished kip skins, contained in the tannery late of said E. Bayer, in Tioga Township, in the county of Tioga, in the State of Pennsylvania, in said district, and one hundred cords of hemlock bark, in the yard adjoining said tannery, in said district, of the value of twenty-five thousand dollars, and unjustly detained the same against gages and pledges,

until, &c. Wherefore the said Jefferson Harrison, assignee in
15 bankruptcy of E. Bayer, says that he is injured and has sustained damages to the value of twenty-five thousand dollars, and therefore he brings suit, &c.

H. SHERWOOD,
M. F. ELLIOTT,
Att'ys for Plaintiff.

(Endorsed:) No. 27. June term, 1875. Jefferson Harrison, assignee in bankruptcy of E. Bayer vs. Charles Korn and Charles Hauselt. Narr. in replevin. Filed April 3, 1875.

16 *Replevin bond.*

Know all men by these presents that we, Jefferson Harrison, assignee in bankruptcy of Edward Bayer, F. H. Adams, D. L. Aiken, P. S. Tuttle, C. B. Borden, B. C. Wickham, S. M. Geer, E. A. Smead, J. Schuffelin, jr., T. A. Wickham, C. B. Farr, T. L. Baldwin, H. H. Borden, are held and firmly bound unto John Hall, esq., United States marshal for the western district of Pennsylvania, in the just and full sum of fifty thousand dollars, lawful money of the United States, to be paid to the said John Hall, his certain attorneys, executors, administrators, or assigns, to which payment well and truly to be made and done we do bind ourselves and *and* each of us, and our heirs, executors, and administrators, and every of them, firmly by these presents. Sealed with our seals and dated the twenty-second day of February, A. D. one thousand eight hundred and seventy-five.

17 The condition of this obligation is such that whereas the above-bound Jefferson Harrison, assignee in bankruptcy of Edward Bayer, having obtained a certain writ of replevin, issued out of the circuit court of the United States for the western district of Pennsylvania, tested at Williamsport, the twentieth day of February, A. D. 1875, against Charles Hauselt and Charles Korn, late of said district, commanding the said marshal that he should replevy and cause to be delivered to the said Jefferson Harrison, assignee in bankruptcy of Edward Bayer, six thousand tanned veal skins, six thousand tanned kip skins, six thousand tanned and partly-finished veal skins, six thousand tanned and partly-finished kip skins, six thousand tanned and finished veal skins, six thousand tanned and finished kip skins, and one hundred cords of hemlock bark, all of the value of twenty-five thousand dollars:

Now, if the above-bound Jefferson Harrison, assignee in bank-
18 ruptcy of Edward Bayer, shall and will prosecute his suit against the said Charles Hauselt and Charles Korn with effect, and shall and will make return of said goods if return of the same shall be adjudged, and shall and will also, from time to time and at all times hereafter, well and sufficiently keep, save harmless, and indemnify the above-named marshal and his officers, and his and their heirs, executors, and administrators, and every of them, of and from all suits, costs, and charges whatsoever that shall or may accrue to him or them by reason

of the replevin and delivery aforesaid, that then this obligation shall be void, or else to be and remain in full force and virtue.

J. H. HARRISON, [SEAL.]
Assignee of E. Bayer.
F. H. ADAMS. [SEAL.]
D. L. AIKEN. [SEAL.]
P. S. TUTTLE. [SEAL.]
C. B. BORDEN. [SEAL.]
B. C. WICKHAM. [SEAL.]
S. M. GEER. [SEAL.]
19 E. A. SMEAD. [SEAL.]
J. SCHUFFELIN, JR. [SEAL.]
T. A. WICKHAM. [SEAL.]
C. B. FARR. [SEAL.]
T. L. BALDWIN. [SEAL.]
H. H. BORDEN. [SEAL.]

Signed, sealed, and delivered in presence of—

(Endorsed:) No. 27. June term, A. D. 1875. Jefferson Harrison, assignee in bankruptcy of E. Bayer, vs. Charles Hauselt and Charles Korn. Replevin bond. Filed April 3, 1875.

20 *Claim property bond.*

Know all men by these present' that I, Charles Hauselt, of the city, county, and State of New York, am held and firmly bound unto John Hall, United States marshal of the western district of Pennsylvania, in the just and full sum of twenty-five thousand dollars, lawful money of the United States, &c., be paid to the said John Hall, his certain attorney, executors, administrators, or assigns, to which payment well and truly to be made and done I do bind myself, my heirs, executors, administrators, and every of them, jointly and severally by these presents. Sealed with my seal and dated the 22d day of March, one thousand eight hundred and seventy-five.

The condition of this obligation is such that whereas Jefferson Harrison, assignee in bankruptcy of Edward Bayer, having obtained
21 a certain writ of replevin, issued out of the circuit court of the United States for the western district of Pennsylvania, tested at Williamsport, the 20th day of February, A. D. 1875, against Charles Hauselt and Charles Korn, commanding the said John Hall, marshal, that he should replevy and cause to be delivered to the said Jefferson Harrison, assignee in bankruptcy, six thousand tanned veal skins, six thousand tanned kip skins, six thousand tanned and partly-finished veal skins, six thousand tanned and partly-finished kip skins, six thousand tanned and finished veal skins, six thousand tanned and finished kip skins; and whereas the said Charles Hauselt hath claimed property in three hundred and sixty tanned and finished calf skins, 3,720 tanned and partly finished calf skins, 3,820 tanned calf skins, wherefore delivery of said last-mentioned skins claimed by said Charles Hauselt cannot be made:

Now, if the said Charles Hauselt shall and do well and truly
22 deliver up the said 360 tanned and finished calf skins, 3,720 tanned and partly-finished calf skins, 3,820 tanned calf skins, to the said Jefferson Harrison, assignee in bankruptcy of Edward Bayer, if the property thereof shall be adjudged in the said assignee, and shall and do well and truly abide by the judgment of the said court in all

things relating to the premises, and shall also save, keep harmless, and indemnify the said marshal in the premises, then this obligation to be void, or else to be and remain in full force and virtue.

CHARLES HAUSELT. [SEAL.]

Executed, sealed, and delivered in presence of—
HENRY O. BANKS,
G. G. SUTTLIN.

23 STATE OF NEW YORK,
City & County of New York, ss:

Be it remembered that on this 22d day of March, A. D. 1875, before me, Henry C. Banks, commissioner for Pennsylvania in New York, personally appeared and came Charles Hauselt and acknowledged the foregoing instrument to be his act and deed, and desired the same to be recorded as such.

Witness my hand and official seal the day and year aforesaid.

[SEAL.] HENRY C. BANKS,
Comm'r for Pennsylvania, 3 John street, New York City.

24 (Endorsed:) No. 27. June term, 1875. U. S. circuit court. Claim property bond. Filed April 3, 1875.

25 *Appearance.*

In circ. court U. S., west. dist. Pa.

JEFFERSON HARRISON, ASSIGNEE OF EDward Bayer,
vs.
CHARLES HAUSELT AND CHARLES KORN. } No. 27. June T., 1875.

APRIL 8th, 1875.—We do hereby appear for the above-named defendants, reserving all exceptions.

ARMSTRONG & LINN,
Att'ys for Def'ts.

To H. MCCLURE, Esq., *Clerk.*

(Endorsed:) No. 27. June T., 1875. Jefferson Harrison, assignee in bankruptcy of Edward Bayer, vs. Charles Hauselt and Charles Korn. Appearance for defendants. Filed April 9, 1875.

26 *Rule to plead.*

C. C. U. S., west. dist. of Pa.

JEFFERSON HARRISON, ASSIGNEE, &C.,
vs.
CHARLES HAUSELT AND CHARLES KORN. } No. 27. June T., 1875.

And now, April 3, 1876, attorney for plaintiff enters a rule on defendant to plead in one month, or judgment.

HENRY C. PARSONS,
Pl'ff's Att'y.

To B. S. BENTLEY, JR., *Clerk.*

(Endorsed:) No. 27. June T., 1875. Rule to plead. Filed April 3, 1876.

27 *Plea.*

In the circ. court of the United States for the western dist. of Penn'a.

JEFFERSON HARRISON, ASSIGNEE, &C., OF Edward Bayer,
vs.
CHARLES HAUSELT AND CHARLES KORN. } No. 27. June term, 1875.

And the said defendants, by Armstrong & Linn, their attorneys, come and defend the wrong and injury, when, &c., and say that they did not take the said goods and chattels in the said declaration mentioned, or any or either of them, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against them. And this the said defendants put themselves upon the country.

And for further pleas in this behalf the said defendants, by their said attorneys, say that the said plaintiff ought not to have or maintain his aforesaid action against them, because they say that the said
28 goods and chattels at the said time, when, &c., were the property of the said defendants, and not of the said plaintiff, as by the plaintiff's said declaration is above supposed; and this they, the said defendants, are ready to verify; wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them.

ARMSTRONG & LINN,
Att'ys for Def'ts.

APRIL 3, 1876.

(Endorsed:) No. 27. June term, 1875. Plea of defendants. Filed April, 1876.

29 *Rule.*

In the circ. court of the United States, western district of Penn'a

JEFFERSON HARRISON, ASSIGNEE, &C., OF Edward Bayer,
vs.
CHARLES HAUSELT AND CHARLES KORN. } No. 27. June T., 1875.

And now, the 3d day of April, A. D. 1876, the defendants, by Armstrong & Linn, their attorneys, enter a rule upon plaintiff to file his replication in this case within thirty days, or judgment, &c.

ARMSTRONG & LINN,
Attorneys for Def'ts.

To B. S. BENTLEY, JR., Esq., *Clerk.*

APRIL 3, 1876.

(Endorsed:) No. 27. June term, 1875. Filed April 3, 1876.

30 *Replication.*

C. C. U. S., west. dist. of Pa.

JEFFERSON HARRISON, ASSIGNEE, &C.,
vs.
CHARLES HAUSELT ET AL. } No. 27. June T., 1875.

And the plaintiff, as to the first plea of defendants above pleaded, and whereof they have put themselves upon the country, doth the like.

And the said plaintiff, as to the second plea of the said defendants above pleaded, and whereof they have put themselves upon the country, doth the like.

HENRY C. PARSONS,
Att'y for Pl'ff.

APRIL 21, 1876.

31 (Endorsed:) No. 27. June T., 1875. Jefferson Harrison, assignee, &c., vs. Charles Hauselt et al. Replication. Filed April 21, 1876.

32 *Notice of trial.*

Circuit court of U. S., western district of Pennsylvania.

JEFFERSON HARRISON, ASSIGNEE, &C., *vs.* CHARLES HAUSELT ET AL. } No. 27. June T., 1875.

MESSRS. ARMSTRONG & LINN,
Def'ts' Att'ys:

You are hereby notified that the above case has been ordered for trial at June term, 1876, of the U. S. circuit court for the western district of Penn'a.

May 3, 1876.

HENRY C. PARSONS,
Pl'ff's Att'y.

(Endorsed:) No. 27. June T., 1875. Harrison vs. Hauselt. Notice of trial. Filed May 4, 1876.

33 MAY 3, 1876.—Copy at office of Armstrong & Linn.
HENRY C. PARSONS.

Motion and reasons for new trial.

Circuit court United States for the western district of Pennsylvania.

HARRISON, ASSIGNEE OF BOYER, *vs.* CHARLES HAUSELT. } No. 27. June T., 1875.

Now, to wit, June 26, 1878, the counsel for the defendant respectfully move the court for a new trial, and in arrest of judgment, for the following reasons:

First. The court erred in their construction of the contracts and in the charge to the jury in matter of law, as appears by reference to the same.

Second. The court erred in not charging the jury—

1. That to constitute the possession of the property taken by
34 Hauselt under the contract under Nov. 6, 1874, an unlawful preference under the bankrupt law, it must appear that thereby the bankrupt's estate was diminished to the detriment of other creditors.

2. That it was thereby intended to withdraw, and did withdraw, from the creditors a fund which otherwise would have been available for general distribution.

3. That if the jury believed from the evidence that Bayer was unable

to perform his contract of the 29th of May, 1874, and so notified the defendant, and that the contract of Nov. 6, 1874, was entered into and the possession taken by the defendant under it with a view to preserve the property from destruction or great deterioration and loss in its then condition, such contract was lawful, and the possession taken was lawful, and the plaintiff could not recover in this action.

35 4. That the right of the assignee in the property could rise no higher than the right of Boyer, and that such right was dependent upon fulfilment by him of the conditions of the contract of May 29, 1874, and that said Bayer having before his bankruptcy notified Hauselt that he could not comply with the contract, it was a mutual abandonment of the contract by him, which authorized Hauselt to assume the immediate possession of the property, and it being in the nature of the case impossible to remove the hides in their then condition without total loss of the same, the agreement of Nov. 6, 1874, and the possession taken under it was not in fraud of the bankrupt law in the absence of proof of actual and intended fraud.

Third. The court erred in rejecting the evidence offered on behalf of the defendants of the amount expended by Hauselt after Nov. 6,

36 1874, in tanning, currying, and finishing the skins in the tannery at Tioga; also in rejecting evidence to prove that there was a loss on the final account of sales of the skins of $15,789.10.

Fourth. That the court erred in instructing the jury that Hauselt had no right to take possession of the skins after Bayer had notified him that he, Bayer, could not fulfil his contract, and that such taking of possession was in itself a preference or intended to be so.

Fifth. The court erred in not permitting a juror to be withdrawn when defendant was taken by surprise in the midst of the trial, it having become necessary for his counsel to become a witness and to cease to act as counsel.

ARMSTRONG & LINN,
Att'ys for Def't.

37 (Endorsed:) No. 27. June T., 1875. Harrison, assignee, &c., vs. Charles Hauselt. Motion and reasons for new trial and in arrest of judgment. Filed June 26, 1878.

38 *Order of court.*

Cir. court west. dist. Pa., June term, 1875.

J. HARRISON, ASSIGNEE, &C., *vs.* CHARLES HAUSELT ET AL. } No. 27. Motion for new trial.

And now, March 26, 1879, the motion for a new trial in this case is denied, and judg't upon the verdict is ordered.

By the court.

W. McK.

(Endorsed:) No. 27. June term, 1875. Jefferson Harrison, assignee of Edward Bayer, vs. Charles Hauselt & Charles Korn. Order of court denying new trial and for judgment. Filed March 26, 1879.

39 *Bond.*

Circuit court of the United States of America for the western district of Pennsylvania, in the third circuit.

JEFFERSON HARRISON, ASSIGNEE IN BANKRUPTCY of Edward Bayer,
vs.
CHARLES HAUSELT AND CHARLES KORN.

Know all men by these presents that we, Charles Hauselt, Matthew Armstrong, and David Wallerstein, all of the city and State of New York, are held and firmly bound unto the above-named Jefferson Harrison, assignee in bankruptcy, in the sum of five hundred (500) dollars, to be paid to the said Jefferson Harrison, for the payment of which well and truly to be made we bind ourselves, and each of us,
40 our, and each of our, heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the eleventh day of April, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas the above-named Charles Hauselt has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the western district of Pennsylvania:

Now therefore the condition of this obligation is such that if the above-named Charles Hauselt shall prosecute his writ of error to effect and answer all damages and costs if he fail to make his plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CHARLES HAUSELT. [SEAL.]
MATTHEW ARMSTRONG. [SEAL.]
DAVID WALLERSTEIN. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 11th
41 day of April, 1875, before me.

[SEAL.] CHAS. A. WINSHIP,
Notary Public for Kings Co.

(Certificate filed in New York Co., N. Y.)

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Charles Hauselt, Matthew Armstrong, and David Wallerstein, being duly severally sworn, doth depose and say, each for himself, that he is worth the sum of forty thousand dollars over and above all his just debts and liabilities.

CHARLES HAUSELT.
MATTHEW ARMSTRONG.
DAVID WALLERSTEIN.

Sworn to this 11th day of April, A. D. 1879, before me.

[SEAL.] CHARLES A. WINSHIP,
Notary Public for Kings Co.

(Cert. filed in New York Co., N. Y.)

42 (Endorsed:) No. 27. June term, 1875. U. S. circuit court, western district of Penn'a. Jefferson Harrison, assignee, vs. Charles Hauselt and others. Bond. Filed this 14th day of April, 1879.

It appearing by the rec't of the pl'ff dated March 29, 1875, that the def't deposited with the Nat. Park Bank of N. Y. City six hundred shares of the stock of said bank as security for whatever sum might be recovered in the within-stated case, which security was accepted as sufficient by the pl'ff and is now held by him, the within bond is therefore approved as a supersedeas of execution in the judg't.

W. McKENNAN,
Cir. Judge.

43 *Writ of error.*

UNITED STATES,
Western District of Pennsylvania, set:

[SEAL.] The President of the United States to the judges of the circuit court of the United States in and for the western district of Pennsylvania, greeting:

Because that in the record and process, and also in the rendering of judgment, in a suit before you, between Jefferson Harrison, assignee in bankruptcy of Edward Bayer, plaintiff, and Charles Hauselt and Charles Korn, defendants, in a plea of replevin, a manifest error has intervened to the great damage of the said Charles Hauselt and Charles Korn as in these complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties afore-
44 said in this behalf; You are hereby commanded that if judgment thereof be given, then, under your seal, you distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Williamsport, this fourteenth day of April, A. D. one thousand eight hundred and seventy-nine, and in the one hundred and third year of the Independence of the said United States.

B. S. BENTLEY, JR.,
Clerk of Circuit Court, U. S.

Allowed by—
W. McKENNAN,
Cir. Judge.

45 (Endorsed:) C. C. U. S., W. D. Pa. No. 27. June term, 1875. Jefferson Harrison, assignee in bankruptcy of Edward Bayer, vs. Charles Hauselt and Charles Korn. Writ of error.

46 *Citation.*

Circuit court of the United States for the western district of Pennsylvania, in the third circuit.

JEFFERSON HARRISON, ASSIGNEE IN BANKRUPTCY of Edward Bayer,
vs.
CHARLES HAUSELT AND CHARLES KORN.

UNITED STATES OF AMERICA, *ss:*

To Jefferson Harrison, assignee in bankruptcy of Edward Bayer, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, 1879, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western district of Pennsylvania, wherein Charles Hauselt is plaintiff
47 and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, of the 14th day of April, in the year of our Lord one thousand eight hundred and seventy-nine.

W. MCKENNAN,
Cir. Judge.

(Endorsed:) No. 27. June term, 1875. U. S. circuit court. Charles Hauselt, plaintiff in error, vs. Jefferson Harrison, assignee, defendant in error. Citation.

APRIL 14, 1879.—Service accepted for Jefferson Harrison, assignee.
HENRY C. PARSONS,
Att'y for J. Harrison.

48 *Testimony.*

Friday, June 21st, 1878. Before Judge McKennan and a jury.

Parsons, Elliott.

J. HARRISON, ASSIGNEE OF EDWARD BAYER,
vs.
CHAS. HAUSELT AND CHAS. KORN. } Replevin.

Sanders.

The writ was issued on the 20th of Feb'y, 1875. The return of the marshal is in these words: "Feb'y 24th, 1875. Replevied as within, &c., &c."

Plaintiff's counsel offer an assignment to Jefferson Harrison, assignee, from Edward Bayer, dated the 18th of January, 1875. The assignment is of all the bankrupt's estate on the 10th of November, 1874.

FACTS ADMITTED.

1st. The execution of the contract between Edward Bayer and
49 Charles Hauselt, dated the 29th of May, 1874, and the authority of E. Hauselt to sign the name of Charles Hauselt thereto.

2d. The execution of the contract between Edward Bayer and Charles Hauselt, dated the 6th of November, 1874, and the authority of Thomas Bowman to sign the name of Charles Hauselt thereto.

3d. That Shearer and Korn, acting as the agents of Charles Hauselt, in the custody of the calf skins in the Bayer Tannery, at Tioga, Pa., after the 6th of November, 1874.

4th. That Jefferson Harrison made a demand on the defendants for the property replevined on the 19th of Feb'y, 1875.

5th. That Charles Hauselt, by his agent, took possession of the property mentioned in the contract dated Nov. 6th, 1874, in pursuance of said contract.

Plaintiff's counsel reads in evidence article of agreement be-
50 tween Edward Bayer, of the first part, and Charles Hauselt, of the second part, dated the 29th of May, 1874.

Plaintiff's counsel read in evidence agreement dated the 6th of November, 1874, between Edward Bayer, of the first part, and Charles Hauselt, of the second part.

EDWARD BAYER sworn for the plaintiffs.

Q. Where do you reside?
A. In Brooklyn, New York.
Q. Where were you living in May, 1874?
A. In the same place.
Q. Where were you doing business?
A. In Tioga, Tioga County, Pa.
Q. What was your business?
A. Tanning, principally.
Q. Were you running a tannery there?
A. Yes, sir.
Q. You are the party in this contract referred to in the contract of May 29, 1874, as Edward Bayer?
A. I am, sir.

Q. At that time the contract was entered into had any hides or
51 skins been purchased that are referred to in that contract?

A. Not at the time the contract was signed. They were purchased after the execution of it.

Q. None purchased prior to the execution?
A. No, sir.
Q. Nor none at the time of the execution?
A. No, sir.
Q. Who purchased the hides that were purchased in pursuance of that contract?
A. I purchased them.
Q. In whose names were the bills made in?
A. In my name.
Q. Where were they shipped to?
A. To Tioga, Tioga County, Pa.
Q. Directed to whom?
A. Directed to me. To Edward Bayer.
Q. State if they were shipped from time to time in parcels.

A. Yes, sir; in lots—each lot by itself; as purchased it was shipped immediately.

Q. During what period of time was you purchasing those hides?

A. From the 1st of June, or probably thereabouts, up to the latter part of July; perhaps in August. I am not very positive.

52 Q. State if you purchased them at different places and of different persons.

A. Yes, sir; at different places and of different parties.

Q. These hides, after being delivered at Tioga, were put into your tannery there?

A. Yes, sir.

Q. Who was running the tannery; who was doing the business?

A. Mr. Korn was the sup't.

Q. In whose name was the business being run?

A. In my name.

Q. Who employed the hands; who paid the hands?

A. I paid them.

Q. Who purchased the bark?

A. I purchased the bark.

Q. And the entire business was conducted in your name?

A. Yes, sir.

Q. Up to what time?

A. Up to the time of my failure.

Q. State whether B. C. Wickham & Co. were one of your creditors.

A. Yes, sir; at this time.

53 Q. State for what purpose; state if they furnished you money between the 1st of June and the time of your failure.

A. Yes, sir; I think they did.

Q. About how much?

A. At the time of my failure there was, I think, about $6,000.

DEFENDANT'S COUNSEL. There must be a proof in bankruptcy of Wickham's claim.

PLAINTIFFS' COUNSEL. The purpose of the testimony is to show that he was conducting the business in his own name. That the money he received from others went into business.

Q. State how much you owed them at that time.

A. I think something over $6,000.

Q. For what was that money used?

A. Used at my business at Tioga.

Q. Tanning hides?

A. Paying labor, &c.

Q. Running the business of manufacturing hides?

A. Yes, sir.

54 Q. You said that you purchased the bark; state whether you owed the men that worked about the tannery, and still do, and also for the bark; at the time of your failure state whether there were claims of workmen against you.

A. I believe there were.

Q. For work done on the hides purchased by you under this arrangement?

A. Yes, sir.

Q. About what quantity of hides were there on hand at the time you executed this 2d contract—green hides, hides in the process of tanning, tanned and finished leather?

(Defendants' counsel objects, unless witness has knowledge.)

Q. What quantity of hides did you have on hand, if you know? If

you have knowledge on the subject state about the quantity you had on hand and their condition as to completion of manufacture into leather at the time you executed the 2d contract.

55 A. I cannot tell exactly what the number was.

Q. About the quantity?

A. There ought to have been at the tannery——

Q. What, in your judgment, the quantity?

A. But a small proportion had been shipped as completely finished, and the others in process of tanning, currying, and finishing.

Q. How many had been sent to New York?

A. I could not tell you.

Q. You can approximate?

A. There might have been 5 or 600; there may have been more.

Q. Could it exceed 1,000 hides?

(Defendants' counsel object.)

Q. Putting it as fully as many as there could have been—more shipped away—about how many were shipped away?

A. I don't really remember the exact number.

Q. Not exactly.

A. Nor approximately.

Q. Could you get within 500?

56 A. I suppose there might have been between 500 or 1,000 completely finished and sent away.

Q. How many did you put in there?

A. About 22,000.

Q. What was the value of these hides?

(Defendants' counsel objects, because witness has not shown knowledge as to value.)

By the COURT. He ought to have some knowledge.

Q. How long were you in the business of tanning and selling hides?

A. From 1861.

Q. And continued until your failure in 1874?

A. Yes, sir.

Q. What were those hides worth?

A. In the raw state?

Q. Yes, sir.

A. $2.00 a piece—sometimes less and sometimes more, but the average price considered at $2.00.

Q. Take the hides that were tanned, not finished, what were they worth?

A. Well, about 35c. above what they cost.

57 Q. $2.35 would be a fair price?

A. About that.

Q. What were they worth finished?

A. Well, that would depend on the market price.

Q. According to your recollection of the market prices at that time?

A. At that time the expectation was they would bring on an average from $3.50 to $4, but that, of course, is only a guess.

Q. That is your estimate what a fair market value would be?

A. Yes, sir.

Q. Some of them are described as ¼ finished and some ½ finished?

A. I don't know exactly what is meant by ¼ finish—whether all curried or whether part of the currying.

Q. ¼ finished from their condition after being taken out of the liquor.

A. The tanning proper is 35 cents. Call that ¼ of the total expenses.

Q. The difference of the value of hides green and the value of the

hides finished is the cost of tanning and finishing, as you understand?

58 A. Yes, sir.

Cross-examination:

Q. How long have you resided in Brooklyn?

A. Since 1841.

Q. What has been your business in New York?

A. I have not been in much business in New York, not in any regular business, excepting in 1841 and 1842 I was in the wine business—importing wines.

Q. Do you mean to say you had no other business in N. Y. from 1841 to 1874?

A. No, sir; no regular business.

Q. What irregular business were you engaged in?

A. I was attending to my Tioga business—making purchases in New York, travelling to sell, and so on. The greater part of my time was taken up with the Tioga business.

Q. What was your Tioga business?

A. It was lumbering first, and I erected a grist-mill—milling and farming, and I owned a turnpike road, and afterward in 1861 I

59 was induced by a French tanner to go into the tanning business.

Q. In 1874 did you still keep up the grist-mill and other business?

A. Not the lumbering; that I had given up. I had only the grist-mill and whatever farming was done.

Q. Did you have a farm there?

A. Yes, sir; had lands.

Q. How many acres?

A. Something like the management of 2,000 acres.

Q. Any houses upon it?

A. Yes, sir; some houses upon it; houses principally for men in my employ.

Q. You say you had the management of 2,000 acres; who had title?

A. The title was in my mother-in-law.

Q. What is her name?

A. Palmateer.

Q. Where does she live?

A. In Brooklyn.

Q. Do you live in the same house?

A. Yes, sir; in the same house.

Q. How much property on the 6th of Nov., 1871, did you own

60 in Tioga. How many acres?

A. I owned one-half of a certain portion, and also of the plank-road and buildings thereon.

Q. How many acres?

A. Well, probably—I cannot tell exactly. There may have been altogether about 1,000.

Q. You own ½ of 1,000 acres?

A. Yes, sir.

Q. Did you build an orphan asylum in Brooklyn, N. Y.?

(Plaintiff's counsel objects.)

Q. You said that you paid for all of the skins that were sent to your Tioga tannery. I understood you to say that you paid for all of the skins sent to your tannery under the contract of 29th of May with Mr. Hauselt?

A. Mr. Hauselt furnished the money to buy them.

Q. Did you testify, upon your direct examination, that you
61 paid for the skins that were sent to the Tioga tannery?

A. No, I did not pay for them. I certified the bills, and the parties could go to Mr. Hauselt and receive their pay.

Q. And Mr. Hauselt paid for all the skins?

A. He did.

Q. Did you buy all of the skins?

A. No; I think a few hundred were bought by Mr. Hauselt, taken from some of his customers at Scranton or Pittston, but not many, perhaps a couple hundred.

Q. How often from the 29th of May, 1874, did you leave Brooklyn and go up there?

A. That I could not tell.

Q. Do you recollect that you was there more than once?

A. Oh, yes.

Q. Well, twice?

A. I think I was there 3 or 4 times.

Q. At the tannery?

A. Yes, sir.

Q. What were you doing there?

A. I was attending to my business; not tanning of course; that was left with Mr. Korn.

Q. All of the tanning was done by Mr. Korn?

62 A. Yes, sir.

Q. He employed the hands and discharged them?

A. Yes, sir.

Q. He shipped the goods to Mr. Hauselt?

A. Yes, sir; I had an agent then, a bookkeeper, and they together were to do that.

Q. The bookkeeper was not at the tannery?

A. No, sir; in the office close by. He kept my books.

Q. For the farm, grist-mill, and everything?

A. Yes, sir.

Q. A nd Mr. Korn did everything about the skins from the time they were in the raw until shipped off to Hauselt?

A. Yes, sir; and superintended the whole work of tanning, currying, and finishing.

Q. Mr. Korn was to receive a portion of the profits that you realized from the sale of the skins?

A. No, sir; I think the agreement with him was that he should receive a fixed salary.

Q. Did you ever sell any of these skins?

A. No; not under these contracts.

63 Q. Did you ever claim to own these skins before you went into bankruptcy?

(Plaintiff's counsel object, as not cross-examination.)

Q. What was the amount of the claim of your mother-in-law against your estate?

A. It is not now what it was before.

Q. Did you keep book acc't; did your bookkeeper keep books where money went to?

A. Yes, sir.

Q. Are those books here?

A. In the hands of the assignee.

Q. Can you show from your books how much of the $6,000 you borrowed of Mess. Wickham & Co. went into the business of tanning?

A. No. Some of it may have been employed in something else; all employed at Tioga.

Q. How much went to the grist-mill, farm, or tannery you don't know?

A. None went into the grist-mill, because there was no occasion to put anything into the grist-mill.

64 Q. How much did you use yourself?

A. I did not use any.

Q. You are sure of that?

A. Yes, sir.

Q. When did you borrow that?

A. That I could not tell. It was my bookkeeper; he used to draw on me when he wanted money. He made drafts on me and Wickham & Co. would discount those drafts and hand him the proceeds thereof.

Q. That is all you know about it, then?

A. That is all I know about it.

Q. You did not dispose of the proceeds of the drafts at all?

A. The proceeds did not come in my hands at all.

Q. Then you have no actual knowledge beyond that the drafts came to you and were paid by Wickham & Co.?

A. Yes, sir. And my bookkeeper used to write me.

Q. Never mind that. You have no actual knowledge beyond that?

A. No.

65 Q. How do you know how many skins were sent to New York before the 6th of Nov., 1874?

A. I knew it at the time from what my bookkeeper represented it to be.

Q. How do you know how many skins were shipped to Tioga tannery?

A. Because I attended myself to the shipping; I attended to the shipping and delivery. I made arrangements with the railroad companies as to freight, and all of that; that was my business.

Q. Did you attend to it in every instance?

A. I think so, except when I was absent, but I don't think any was shipped when I was not there.

Q. You said that the value of the skins you merely guessed at?

A. Yes, sir; I could not say exactly what they would cost. That would only be determined at the end; a tanner could not tell from the beginning, from a few lots that were completed, what the rest would cost. He might guess, but the whole cost could not be ascer-

66 tained until the whole operation was done.

Q. I understand you to say that the difference between the value of the raw skins and the finished skins was the costs of manufacturing, and that that could not be determined until the whole thing was done—until the cost of the bark, oil, labor, and everything had been included; in that way you arrive at your estimate of the value of the finished skin, do you?

A. Yes, sir.

Redirect examination:

Q. This first contract was not signed by Mr. Hauselt himself?

A. No, sir.

Q. State what instructions you received, or what statement was made by Mr. Hauselt, at or about the time that contract was executed, in reference to the agents who executed it; state what was said by Mr. Hauselt prior to the execution of this contract of the 29th of May, 1874.

67 A. Mr. Hauselt, if I remember right——

Q. State what he said before this contract was executed, after the agreement was made in relation to Mr. Bourman.

A. He said that in his absence Mr. Bourman and Mr. Shearer would attend to his business; that is all.

Q. Mr. Bourman and Mr. Shearer—do you know their first names?

A. Mr. Bourman's, I think, was Theodore; the other I do not remember.

Q. Frederick. State whether they were present.

A. Yes, sir.

Q. Where did he go?

A. Hauselt was on the point of going to Europe; he was not in New York at the time.

Q. At this time of the agreement was you talking about the calf skins?

A. Yes, sir.

Q. State if this is the same Bourman that signed the contract of the 6th of November.

A. Yes, sir.

Q. And the Mr. Shearer the same man who acted?

68 A. Yes, sir.

Q. Is he the party who took possession of the tannery?

A. Yes, sir.

Q. State whether Mr. Hauselt was there the time the contract was written and signed.

A. No, sir.

C. H. SEYMOUR sworn for the plaintiff.

Q. Where do you reside, and where were you living in 1874?

A. I reside at Tioga, Tioga County; resided there in 1874.

Q. What is your business or profession?

A. I am practicing law.

Q. State whether you were the attorney of Edward Bayer in 1874.

A. I was, and had been for some time.

Q. State whether you went to New York for the purpose of seeing Mr. Hauselt, or the parties acting for him, on or about the 6th of November, 1874.

A. I did not go there for that purpose.

Q. Were you in New York?

69 A. I was in Brooklyn on the day of the proof of the application of Mr. Bayer in bankruptcy.

Q. Where was that?

A. I think it was on the 5th of Nov., 1874; either the 5th or 6th.

Q. At the time he swore to his application?

A. Yes, sir; I went there a day or two before.

Q. Then you may state whether, during the time you were there, and upon what day, if you remember, you had an interview with Mr. Hauselt's agents, one or more of them.

A. On the day before the proof of the application in bankruptcy, Mr. Bourman and Mr. Shearer, as I remember their names, called at Mr. Bayer's, or at Mrs. Palmateer's, where Mr. Bayer lives, and desired an interview with him. Mr. Bayer was not in a condition to take charge of the business; he was sick, and his troubles had overcome him; he was partially insane at the time.

70 (Defendants' counsel objects, as the witness is not an expert on insanity.)

A. But he could remember things of the past very well. I was requested to meet these gentlemen. Mr. Bayer did not want to see them because he was not fit; I was requested to see them and did. Went up into the room and met them there. Do you want to know what transpired there?

Q. Yes, sir.

A. These gentlemen stated that they had learned that the business at Tioga was not going along as it should. That there was a lack of means for the purchase of stock, oils, or something of that kind. Had been informed, I think, they said Mr. Korn—and they said they had come to obtain security—further security for the performance of the contract on the part of Mr. Bayer. I informed them that Mr. Bayer was incapable of further fulfilling that contract, or going on with it, mentally, physically, and financially; that he
71 had no money, no means, and that he could not do any more with it and that he could not give any security, no name, or note; that he had now to give them. I think they further pressed the matter and asked me what they should do, indicating that they wanted some intimation of opinion, and I proposed to them to do the same thing as was done the next day; that I said to them I would advise Mr. Bayer to consent that they should take possession of the property up there—the skins and the tannery, and do what he was to do, keeping an account of all the costs and expenses and adding that amount to the amount to be deducted from the amount of the sale of the leather. They rejected it. They said they did not want to have anything to do with it and would not. I said then, "I think gentlemen, our interview, then, is probably at an end. I do not see as we have any occasion to talk about this." One
72 of them said, "You will not be too fast about it; you will give us time to think." I said, "Yes, I told you, but you rejected it." They said they wanted time to consult their attorney or Mr. Hauset's attorney. I said, "Very well; when will you make up your minds?" They said, "To-morrow." I requested them to do it at as early a time as possible on the morrow, as I was anxious to return home. They said they would come at 2 o'clock the next day, and they did come about that time. I met them again, and my impression is—I am not very distinct—that Mr. Bayer did not go into the room at first, and yet he might have gone up with me. They came; I don't think Mr. Shearer came. Mr. Bourman came, and my recollection is that there was no more besides Mr. Sanders, the attorney. Mr. Sanders presented there a contract to be executed, a bill of sale. (Defendants' counsel ob-
73 ject.) A bill of sale of skins at the tannery there, and read it over to him. I said, "Mr. Sanders, if you desire, upon my stating to you, perhaps as you want to know in relation to this thing, if you then desire Mr. Bayer to execute this contract, I would advise him to do so. But before doing this I want to say to you that it will do no good; that Mr. Bayer is in no condition to place you in any better condition than you are, or to do better by you than the proposition I made to you yesterday. Now, after knowing that if you desire him to execute this assignment, I will advise him to do so, because he wants to do everything to aid Mr. Hauset, or to keep him in as good position as he is in. I think it is better for all the parties that somebody should have possession of the stock and do something with it." Mr. Sanders hesitated a minute and said, and my recollection is that he said—turned to one of the gentleman and said, "I think he is right about it,"
74 or "I think Mr. Seymour is right about it," some expression of

that kind. I think Mr. Bourman expressed some dissatisfaction about my not stating more, and I think they hesitated, and I then said, "Well, gentlemen, if you want to know, Mr. Bayer's papers are all executed, or his application is sworn to for the benefit of the bankrupt act." They immmediately said—Mr. Sanders said, "Gentlemen, you will let me manage this now; I know all about it." He went on and drew this contract.

Q. Is that the contract? (Showing contract of 6th Nov.)

A. Yes, sir; and he requested me to witness it, and I did so. Mr. Bayer signed it. I think after this first conversation I then went down and got Mr. Bayer, but I cannot be certain about that. Mr. Bayer was there and executed that contract in my presence, and I signed as a witness.

75 Q. Who took possession of the tannery and hides?

A. Mr. Bourman said he could not go up. My recollection is that he said he would have Mr. Shearer go; he was not present; Mr. Shearer met me at the Jersey City depot that same evening and he and I went to Tioga, and I took him over to introduce him to Mr. Putnam, Mr. Bayer's agent and bookkeeper, and told him his purpose; that he was to have possession of skins and tannery and business there for the purpose of finishing that contract, and left Mr. Shearer there; I don't know whether I went with him to the tannery or not; I cannot remember that; I went to the office with him, I think; Mr. Putnam went down with him, I think—somebody did; I think it was Putnam.

Q. You informed him that he was to deliver him the possession?

76 A. Yes, sir; that he had come there to take possession of the skins and do everything that was to have been done to them the same as Mr. Bayer; that he would continue to act until superseded in some way; and he remained there, I think, until May.

Cross-examination:

Q. Are you positive you said anything about bankrupt proceedings?

A. I should be as sure of that as of anything else, if you, Mr. Sanders, had not said to me that you did not remember it, and that always makes a man doubt it a little; that's all the difference.

Q. Do you recollect of comparing the agreements?

A. I think you wrote them both and handed one to me, and you read the other, or I did, and you looked over—I think you read.

Q. Do you recollect it stated this, "Whereas the party of the first part," &c., &c.; do I understand you to say that you are positive or think you consented to your client's executing this contract after

77 you had made a statement that he had prepared his application to go into bankruptcy, stating why the reason it was done was that he was physically unable to complete the tanning and finishing of the skins?

A. Yes, sir; I remember that portion of it distinctly, because we talked over that it would be better immediately after, there at our meeting; we talked over the question of having somebody go on and tan these skins; that they had better be tanned, and whatever the legal situation of the parties was that it would be best for any one.

Q. If not tanned, it would be a dead loss—those in the vats?

A. I am not a manufacturer, but I thought I understood they had better be finished and put into the market so as to make them available for the benefit of somebody. I had instructions from Mr. Bayer to do everything to keep Mr. Hauselt in as good a situation as he

78 was, because he felt kindly to him.

Q. Did you consent that your client should state a reason which you did not believe to be the truth?

A. It was not so. I stated this and another reason, and the other reason I suppose you did not want to insert in the contract.

Q. I want you to state the reason that is put in here, that he had become ill and physically unable to complete the tanning, was put in there at your suggestion and was a mere blind.

A. No, sir; I made no suggestion at all; after I stated what I thought might be done, and the only thing that could be done, you went on without dictation and drew the contract, and I approved and said it was well enough—would leave the parties just where they were, so far as the law was concerned.

Q. When you got back to Tioga were there not attachments out against Mr. Bayer's property?

79 A. Yes, sir; I was met about 50 rods from the plank road by the dep'ty sheriff with attachments, and he undertook to serve them after that.

Q. How long before you went down to Brooklyn had you seen Mr. Bayer at Tioga?

A. I cannot state; it had been some little time; I kept no memorandum. I had seen him there frequently during the season; sometime' he would remain a week or two and sometimes a day or two. I cannot tell how long it was before. Mrs. Palmateer, whom I also was attorney for, I went to see.

Q. Did you know anything about these suits on which attachments were bro't, before you went to Brooklyn?

A. There were no suits. I went for the very purpose of stopping all costs.

Q. Please answer my question. I ask you if you had any intimation that these suits would be brought before you went down?

80 A. I had no intimation, only from the situation. I knew there would be unless something was done to stop them. A great deal of the estate would be used up in costs, and I wanted to stop them. I went away without saying anything to anybody, of course. I was as much surprised as any one about the situation. A great many did not believe it after I returned; a great many expressed to me their disbelief as to Bayer's failure.

Q. He had been reputed to be a wealthy man?

A. He was known to be situated as he was. It was supposed that Mrs. Palmateer and the parties all were wealthy, and that there was no sort of difficulty in trusting Bayer to any amount at that time.

Q. The property really all in one control?

A. Mr. Bayer represented the property as attorney in fact of the other 3 parties and for himself at that time.

81 (Plaintiff's counsel offer in evidence demand of Feb'y 19, 1875, by J. Harrison, assignee of Edward Bayer: "You are hereby notified," &c., &c.)

PLAINTIFF'S COUNSEL. The petition in bankruptcy was filed the 10th of November, 1874, and the adjudication was on the 21st of Nov., 1874.

Plaintiff rests.

Defendants' counsel move for a nonsuit, on the ground that neither the bankrupt nor the plaintiff, his assignee, ever had any title in the skins.

By the COURT. You have not closed your case. You may request that the jury be so charged, and I will dispose of it hereafter.

Argument.

The court declined to grant the motion at this time.

Noon adjournment.

82 CHARLES HAUSELT sworn for the defendant.

Q. Are you one of the defendants in this action?

A. I am, sir.

Q. In the year 1874, and a long time prior thereto, what had been your business and where?

A. The leather business.

Q. And where?

A. In New York.

Q. Just state a little more—leather business and doing what?

A. Importing and selling leather, finished skins, and in the hair also.

Q. How long had you know' Edward Bayer, the bankrupt?

A. Some 5 or 10 years.

Q. Have business transactions with him before?

A. Yes, sir.

Q. What was the financial reputation in *in* May, 1874, so far as you know?

(Plaintiff's counsel object as immaterial.)

83 DEFENDANTS' COUNSEL. I propose to show what it was on the 29th of May, 1874, and that there was no change from that time down to the 6th of Nov., and that Mr. Bayer was reputed to be very wealthy, so far as the defendant knew.

A. He was considered a man of means.

Q. What do you mean by a man of means?

A. He was considered a man owning large tracts of land in Tioga County, and stocks and so on.

Q. Did he have a good financial standing in New York, to your knowledge?

A. He had.

Q. When did you first acquire any knowledge of Mr. Bayer's insolvency? Was it prior to the 6th of Nov., 1874?

A. I believe I was on the sea at the time, and then I arrived here.

Q. After the 6th of Nov., 1874?

A. Yes, sir.

Q. Under the contract of May 29th, 1874, did you pay out any moneys on account of that contract?

84 By the COURT. Make any advances?

A. Oh, certainly, we did.

(Statement shown.) Will you look at that statement and say whether that is a correct statement of the moneys expended by you?

PLAINTIFF'S COUNSEL. It is already in proof that he went away before the contract was executed, and did not come back until after the 6th of November.

PLAINTIFF'S COUNSEL. Have you any personal knowledge of the payment of these different sums of money? I will ask you whether you did not go away before the contract was executed, and remain away out of the country until after the 6th of November? When did you go to Europe?

A. I cannot recollect exactly. I could not give the date.

Q. Did you pay any of this money yourself?

A. Yes, sir.
85 Q. When?
A. On the 4th of May.
Q. That was before the contract?
A. Before the contract was signed; yes, sir.
(Check dated May 4th, 1874, shown witness.) Is that the check paid out by you to Mr. Bayer under this contract?
A. I signed that check and gave it to Mr. Bayer, but I don't know any more exactly what it was for, for bark or what; we were talking about a contract at that time.
Q. Was it given in reference to this contract of the 29th of May?
A. I do not recollect exactly; it seems that it was given because the account was charged with it in our books.
(Defendant's counsel offer in evidence exhibits numbered from one to thirty-three, inclusive.
Defendants' counsel reads exhibits, with the exception of Nos.
86 1, 3, 18, 19, 22, 26, 27, 28, 29, 30, 32, 34 to 38, and 40, to which plaintiff's counsel object.)
Q. After your return did you make any advances for carrying on the business under the contract put in evidence?
(Plaintiff's counsel object as irrelevant.)
Q. Did you make any outlays after the 6th of Nov. in tanning and finishing the skins at the Bayer tannery?
A. I did, sir.
Q. Have you personal knowledge of the advances made after your return from Europe?
A. After the 1st of December I believe I have personal knowledge; after the last of November I believe I have.
(Plaintiff's counsel object to the evidence as incompetent.)
DEF'TS' COUNSEL. I offer to show the cost put upon the skins
87 by Mr. Hauselt from the 6th of November, 1874, until the 24th of February, 1875, showing the amount expended by him in carrying on the tanning establishment.
The COURT. You propose to show the cost of the labor expended upon the skins from the 6th of November to the 24th of February? There is a right way and wrong way. I suppose Mr. Hauselt is not accountable for what he added by his labor and skill after they left the hands of the bankrupt. But I do not see that you propose to show that. You can show the value of what was done to these skins by Mr. Hauselt after he obtained possession.
(Plaintiff's counsel object to the offer.)
The COURT. The offer in this form is rejected, but the defendant is permitted to prove the value of the labor and skill added by him
88 to the skins in the process of tanning and finishing after he obtained possession of them.
(Objection sustained, and defendants' counsel except.)
Q. Do you know the difference between the value of the raw skins such as were sent to Mr. Bayer's tannery and the finished skins in 1874?
A. I do.
Q. And 1875?
A. Yes, sir.
Q. What was the difference in value on the 24th of Feb'y, 1875?
(Plaintiff's counsel objects.)
Q. How do you estimate the difference in value between the raw skin and finished skins?

A. About one dollar apiece—the difference between the raw skin and the finished skin.

89 PLAINTIFF'S COUNSEL. We can recover nothing but what we declare for, and we declare for nothing but what is stated in the marshal's return.

DEFENDANTS' COUNSEL. I now offer to prove the whole amount of the advances made by Mr. Hauselt under these two contracts to include the finishing of the skins and their sale.

(Plaintiff's counsel object to any advances made after the 6th of November, 1874.)

By the COURT. Objections sustained except as before modified.

DEFENDANTS' COUNSEL. I offer to show that we expended the sum of $15,789.10 in tanning, finishing, and disposing of these skins between the 6th of November, 1874, and the 26th of June, 1875, in carrying out the contracts of May 29th and Nov. 6th, 1874.

90 (Plaintiff's counsel object. Objection sustained, offer rejected, and defendants' counsel excepts.)

By the COURT. The object attempted by the evidence is to show the sums expended by the defendant in finishing the skins after the institution of the bankruptcy proceedings, and for this reason the offer of the evidence is rejected.

DEFENDANTS' COUNSEL. I offer to prove the expenditure of the same amount between the same dates by the defendant in tanning, finishing, and vending the skins.

(Plaintiff's counsel object to any evidence of advancements or expenditures of any kind after the 6th of Nov., '74, and particularly to any expenditure for vending the skins.

2d. Because this is not the best method of obtaining the value

91 of the skins.

Objection sustained; exception by def't.)

DEFENDANTS' COUNSEL. I offer to prove that a balance is due the defendant from the bankrupt, after all the skins had been finished and disposed of by the regular course of sale, of $13,089.50, with interest from July 6, 1876, over and above the receipt from the sales of the skins tanned. This for the purpose of showing that the bankrupt under his contract with defendant Hauselt had no interest in the property recovery of which is sought in this action.

(Plaintiff's counsel object. Objection sustained; defendants' counsel excepts.)

FREDERICK SHEARER sworn for defendants.

92 Q. In the year 1874, and for how long prior thereto, were you in the employment of Charles Hauselt, one of the defendants?

A. About 7 or 8 years.

Q. During that time did you know Edward Bayer, the bankrupt?

A. Yes, sir.

Q. How long had you known him?

A. I do not know exactly; about three or four years before that.

Q. Did you know his reputation for financial standing?

A. What I heard.

Q. Was it good or bad?

A. Very good; he himself told me.

Q. From what he told you?

A. Yes, sir.

Q. When did you see him in August, 1874, in reference to any statement made by him as to his financial standing?

A. I heard him make statements.

(Plaintiff's counsel object.)

93 Q. Did Mr. Bayer point out any property to you as belonging to him?

(Defendants' counsel proposes to prove by the witness on the stand declarations of the bankrupt as to his ownership of property in Tioga County, Penn'a, in the summer of 1874.

Plaintiff's counsel object. Objection sustained, and defendants' counsel except.)

Q. In November, 1874, did you have any communication with Mr. Korn, who was up to the Tioga tannery about the business up there?

A. Yes, sir.

Q. In consequence of that did you go over to see Mr. Bayer?

A. Yes, sir.

Q. Who went with you?

A. Mr. Bourman.

Q. Whom did you first see when you went to the door?

94 A. An oldish lady.

Q. What did she say?

(Plaintiff's counsel objects.)

Q. What date was it?

A. The 5th of November.

Q. Did she say anything about Mr. Bayer's health?

(Plaintiff's counsel object. Objection sustained, and defendants' counsel excepts.)

Q. Were you enabled to get in after awhile?

A. Yes, sir.

Q. Did you see Mr. Bayer?

A. Yes, sir.

Q. Who else?

A. Mr. Seymour and two ladies.

Q. The witness who was on the stand?

A. Yes, sir.

Q. State what took place between yourself and Mr. Bayer and Mr. Seymour.

95 A. The conversation at first was rather of an informal nature. Mr. Bayer had been very sick—looking so to'—and Mr. Bourman carried on most of the conversation. I was a mere listener. Asked him why he did not send up oil and tallow, as Mr. Korn had required. Mr. Bayer done very little of the talking; it was a lady who done most of the talking, who excused him on the plea that he could not talk anything about business. There was more informal business than business, and it finally ended up by them asking us to furnish those things; to buy oil and tallow and to send it up there. This was in the presence of Mr. Seymour. That is the entire conversation that I heard.

Q. Anything said in your presence by Mr. Seymour or any one else about Mr. Bayer being insolvent?

A. Not a word.

Q. Anything about the want of means?

96 A. Nothing.

Q. Any reason for your carrying on business or sending up things there other than his illness?

A. Not a word.

Q. When did you first learn that Mr. Bayer was insolvent?

A. Mr. Smith, a lawyer of Tioga, told me. That was on the 7th of November, at Tioga.

Q. After you had taken possession of the tannery?

A. Yes, sir.

Q. Did you go up there under the agreement of the 6th of November, 1874, and take possession?

A. I did.

Q. And continue to run it for Mr. Hauselt?

A. Yes, sir.

Q. Did you find Mr. Bayer, when you got up there, in debt to the hands?

(Plaintiff's counsel object as immaterial.)

97 Q. Was he in debt?

(No answer.)

(Defendant's counsel offer in evidence statement of the amount due to workmen by Mr. Bayer, entitled "Pay-roll, November 6th, inclusive," $1,153.47.)

Q. What condition were the skins in when you got there?

A. Some were tanned—part tanned—in different processes, as always happens in a tannery; some were not limed, and were spoiling from the workmen refusing to work without pay.

Q. What was done with skins as soon as finished?

A. Packed and sent to New York.

Q. To Mr. Hauselt the same as before?

A. Yes, sir.

Q. Were any of the skins on hand on the 24th of Feb'y, 1875, tanned & finished on the 6th of November, when you got there?

98 A. No; they could not be. As fast as skins were finished they were shipped; as fast as we had 10 dozen they were shipped in a case.

Q. Can you tell what was done to those skins on hand on the 24th of Feb'y, 1875, from the 6th of November, 1874, when you took charge there?

A. In a general way.

Q. Give us generally what was done with them.

A. I do not rightly understand the question.

Q. What was done to them in the tannery in the way of tanning and currying and finishing from the 6th of November, 1874, up to the 24th of February, 1875, upon those skins that were replevied?

A. Some were put in the lime—went through the different processes of tanning. I am not a tanner myself.

Q. Were there any in the raw when you got there?

A. Yes, sir.

99 Q. Those were put in process of tanning?

A. Yes, sir.

Q. How many were in the raw?

A. That I am not able to state precisely; the superintendent knows better about that, I guess; better than I do.

Cross-examination:

Q. What position do you hold under Mr. Hauselt?

A. None at present.

Q. What did you in 1874?

A. I was salesman and general clerk.

Q. Did you know a good deal about his business?

A. Yes, sir.

Q. Did you know that he had made advances to Bayer?

A. Yes, sir.

Q. Were you acquainted with Bayer?

A. Yes, sir.
Q. What was the object of your going over to see him that day?
A. We had received letters from Mr. Korn a few days pre-
100 vious that he could not get tallow, oil, &c., necessary to finish up with, and had written to Bayer and could get no answer. We had written to Bayer and could get no answer. Some few days previous to our going over one of the ladies came and asked us to purchase some oil and send it off, which we did. We wrote again and could not get an answer, and finally concluded to go over and see what was the matter—could not get answers to our letters.
Q. Mr. Bourman was with you?
A. Yes, sir.
Q. He was also a clerk?
A. Yes, sir.
Q. Did you ask Mr. Bayer in that interview for security for Hauselt's advancements?
A. No, sir.
Q. Are you sure of that?
A. I am sure of it.
Q. Was there talk about security?
A. There was talk about security of a certain loan outside of the tannery business.
101 Q. Did Mr. Bourman tell him he had heard he was going to fail?
A. No, sir.
Q. Did he tell him that he heard he was hard up?
A. No, sir.
Q. Nothing said about that at all?
A. No, sir.
Q. How long were you there?
A. We were there nearly the entire afternoon; certainly two hours.
Q. Talking about the tallow?
A. Yes, sir.
Q. W'ere was the interview?
A. In Brooklyn.
Q. Whereabouts in the house?
A. In the room upstairs.
Q. Second story?
A. I think it was; it was an English basement house.
Q. Tell us who were present.
A. Mr. Seymour, Mr. Bayer, Mr. Bourman, and two ladies, one old lady and one young one.
Q. Was Mr. Bayer in bed?
102 A. He might have been before I got there; when I saw him he was up and dressed.
Q. Was it in a bedroom?
A. No, sir.
Q. In a sitting-room?
A. It looked so.
Q. Did you know Mr. Seymour?
A. Yes, sir; know him well.
Q. You knew he was Mr. Bayer's attorney?
A. Yes, sir.
Q. You knew then that he came on business for Mr. Bayer?
A. No. I said to Mr. Bourman——
Q. In Mr. Seymour's presence?

A. No, sir.
Q. Did Mr. Seymour engage in the conversation?
A. Yes, sir.
Q. Did he or Mr. Bayer tell you that Mr. Bayer had not money enough to buy oil or tallow?
A. No, sir.
Q. Did you talk about the tannery?
A. Yes, sir; not a great deal; my conversation was principally carried on with the old lady.

103 Q. Then you did not pay much attention to the other conversation?

A. It was not of any account—some of it. It was of a general character—principally of Mr. Bayer's illness.
Q. You stayed there talking two hours about his illness?
A. Some other talk between—some about furnishing the oil, tallow, and so on.
Q. Nothing else?
A. Nothing else.
Q. Nothing said about tanning—how the tanning was getting along?
A. No, sir.
Q. Nothing as to when he would ship more leather?
A. No, sir; we knew better about it than they did; we simply talked pleasantly the same as if we were visiting anywhere else; our object was to find out what was the matter. We thought he was going to die be or sent to a lunatic asylum. I heard in Tioga for the first time that he was insolvent.
Q. Is Mr. Bourman here?
A. He is dead.

104 CHARLES KORN sworn for the defendant.

Q. Where do you reside?
A. Middletown, State of New York.
Q. What is your business, and how long?
A. Tanner and currier.
Q. Where were you in 1874, from June until the end of the year?
A. I was in Tioga.
Q. In Mr. Bayer's tannery?
A. At Mr. Bayer's tannery.
Q. Are you the Korn whose name is stamped on the skins as "Korn skins"?
A. So they say.
Q. Had you previously tanned skin for Mr. Hauselt?
A. Yes, sir.
Q. Korn skins?
A. Yes; Korn skins.
Q. Where?
A. Near Middletown.
Q. Was Mr. Hauselt the sole agent for the Korn skins?
A. Sole agent; yes, sir.

Q. In transacting your business in Tioga County how did you
105 make your reports in regard to the tanning, finishing, and delivery of skins?

(Plaintiff's counsel object as immaterial, the witness being merely a subagent.)
Q. Did you have a contract with Mr. Bayer?
A. I did.

(Paper shown marked "Exhibit A, C. E. F.")

Q. Is that the contract?

A. Yes, sir.

(Defendants' counsel offer the contract as identified.

Plaintiff's counsel object as irrelevant. Objection sustained. Evidence rejected. Defendants' counsel except.)

Q. How many raw skins did you have on hand on the 6th of November, 1874?

A. About 5,000 raw skins.

106 DEFENDANTS' COUNSEL. The object is to show the value of the skins replevined.

(Plaintiff's counsel object to any evidence as to amount.)

Q. How many skins were there in the vat untanned?

A. About 9,000.

Q. And as fast as they were finished they were shipped off to Mr. Hauselt?

A. Shipped off.

Q. Did you have any knowledge of Mr. Bayer being insolvent before Mr. Shearer came there; had you any knowledge of Mr. Bayer being insolvent or bankrupt prior to November 7th, 1874?

A. I had not.

Q. Did you have any information or belief on the subject prior to that time?

A. No, sir.

Q. Do you make any claim upon any of this property in suit?

A. I do not.

107 (Mr. Korn disclaims any interest in the property replevied and the plaintiff's attorneys disclaim any right to recover against Mr. Korn.)

Cross-examination:

Q. How many hides were finished about the 6th of November?

A. They were directly shipped as soon as finished. I could not recollect the number. I always put them in the invoice-book and sent them off. I attended to the tanning, finishing, packing, and shipping.

JEFFERSON HARRISON sworn for the defendants.

Q. You are the assignee in bankruptcy?

A. I am.

Q. Exclusive of the claim of Mrs. Palmateer, the mother-in-law of Edward Bayer, what was the amount of debts proved against Edward Bayer?

A. I could not tell you.

Q. Will it exceed $8,000?

108 A. I don't know.

Q. Will it exceed $9,000?

A. I cannot tell you.

Q. Don't you know about what it is?

A. I have the proofs of debt here. I will show you them. That is all I can tell you. I have the proofs of debt on the 18th of Jan'y, 1875.

Q. What is the amount of that?

A. $221,329.39.

Q. What is the amount of Mrs. Palmateer's claim in that?

A. $177,083.23.

Q. Those claims were proved, were they?

A. Those claims were proved.

Q. Were there any more proved after that?

A. That I could not tell you. In the original schedule the preferred debts are—

Preferred debts	$1,071 61
Preferred creditors	312 32
Creditors holding security	None
Creditors unsecured	169,241 36
Ditto ditto	1,172 59
Ditto ditto	10,004 24
Ditto ditto	15,468 03
Total	$197,270 15

109 Q. Mrs. Palmateer's claim in the original schedule is——

A. $160,860.00. That was amended to $170,082.00. There have been other proofs; the assets were too small to pay much attention to them. The entire thing is about $200,000.00.

Q. Mrs. Palmateer's claim is still in dispute between you and Mrs. Palmateer?

A. It was in dispute, and the amount has been liquidated, but no decree filed by Judge Ketcham yet.

Mr. CHARLES KORN recalled for the defendant.

Q. Did Mr. Bayer make any improvements—spend any money in making improvements—on the tannery after you went there in 1874?

A. He had to do it; the tannery was in bad condition.

Q. Did he have make large improvements?

A. Yes, sir.

Q. Do you know how much they cost?

110 A. I should think about $3,000.

DEFENDANTS' COUNSEL. I regret that the testimony of Mr. Seymour compels me to take the stand.

By the COURT. You will then have to discontinue your connection with the case as counsel.

Mr. SHEARER recalled for the plaintiffs.

Q. What relation are you to Mr. Hauselt?

A. Brother-in-law.

Cross-examination:

Q. Where is your business now?

A. Providence, Rhode Island.

Mr. SEYMOUR recalled for the plaintiffs.

Q. Your attention was directed this morning to an interview
111 you had with Mr. Bayer on the 5th of November—the first interview you had.

A. You do not mean with Mr. Bayer. I went there perhaps the 4th, and saw Mr. Bayer.

Q. Did you see Mr. Shearer and Bourman at Mr. Bayer's house?

A. I did on the 5th.

Q. Was Mr. Bayer present at that conversation?

A. I think not. My recollection is that Miss Palmateer upon hearing the bell rung went and looked, we being in a room next to the street, saw who it was, and went and took them in, and took them upstairs—that is my recollection—and came down immediately, and requested me

to go up and talk to them, after consulting with myself and Mr. Bayer. Mr. Bayer did not go up. Mr. Bayer and the ladies, neither one of them was present that day.

Q. The interview was between you and Mr. Shearer and Mr. Bourman?

112 A. I don't think Mr. Bayer was there. I have a good recollection, and I don't recollect of his being there. Mr. Shearer was not there the second day. I don't think that the interview lasted over fifteen or twenty minutes. We had nothing to talk about.

Cross-examination:

Q. Nothing done there that day?

A. No, sir; not that day. Nothing done except as I stated before. The interview was a short one. When the business was introduced I stated what Mr. Bayer could do, and only what he could do, and they refused it, as I have stated. Then they asked time to consider and see their counsel, and it all did not take—I should think now—not over ten minutes; it might have taken a little longer, but my recollection is that it did not take over ten minutes.

113 Q. Are you positive nothing else was done?

A. Not in my presence, unless the parties were there at some other time. There were no ladies present with Mr. Shearer and Mr. Bourman at the time I was there.

Q. There were no ladies present?

A. No more than just to introduce me—left the room and went right down, I think.

Q. You are positive Mr. Shearer was not there the next day?

A. I have no recollection of seeing him. I think you know whether he was there or not.

Q. This conversation that took place between Mr. Shearer and Mrs. Palmateer did not take place in your presence?

A. I think not. I think I was requested to go and see those gentlemen, and explain the situation as Mr. Bayer's counsel, and did go and talk with them entirely alone.

Q. This agreement drawn up the next day was for the purpose of carrying out the contract of May 29th?

114 A. Drawn up precisely under the circumstances I have stated.

Q. That Mr. Bayer was anxious to keep Mr. Hauselt in the same condition as before?

A. He expressed friendship for Mr. Hauselt, and to carry out the idea I tried to advise the young man what to do to keep him in the same position.

Q. That was your idea in advising Mr. Bayer to sign that contract?

A. Yes, sir; that was it just precisely.

Q. You objected to the bill of sale, as it might be a fraud on the bankrupt act?

A. I did not object at all. I stated to him, after stating my views, if he wanted him to sign it I would not object; but that it would not do him any good. My recollection is that Mr. Bourman expressed some dissatisfaction.

Q. There was no agreement drawn up, or paper of any kind, at the first interview?

115 A. Not any; they refused to make any such arrangements.

Q. Or accept any?

A. There was no proposition made, except that was carried out the

day afterward. They refused that, and asked time to consult with the counsel. My suggestion the first day was that they should take possession of the tannery, and go on and tan the hides—furnish the means necessary, and take it out of the proceeds.

(Paper shown.)

Q. Is that your handwriting?

A. It is.

Q. Do you still state that there was no paper drawn up on the 5th of November?

A. I have no recollection, and yet they might have required a proposition to reduce my proposition to writing.

Q. I asked you what was done.

A. I have no recollection of the statement, but in substance, as I have stated.

Q. Was that paper drawn on the 5th of November?

116 A. I have no sort of recollection; it is dated the 5th of November. I have no sort of recollection of that paper being drawn.

Q. Not when that paper was drawn at any time?

A. I have no recollection of it in any form.

Q. How is it you are so positive as to what took place at those two interviews, and have no recollection of this paper?

A. If you can analyze the human mind, and tell why people remember some things and do not remember others, I will give you a clear answer.

Q. Is that the only answer?

A. That is the only answer that I can give you, sir.

Q. Can you account for it now why that paper does not refresh your memory upon any other circumstance?

A. No, sir; because it is keeping with the other circumstances I mentioned, and the simple fact that it was made in writing was
117 a thing that my attention has never been called to, and I never thought of it until now.

Q. How were you positive before that paper was shown that no such paper was executed?

A. I did not say any such paper; it is a proposition, not an agreement; it is the proposition I made to them.

Q. Why were you positive no such paper had been made?

A. I was not positive.

Q. Did you say that you had no recollection, or, in fact, no writing had been made?

A. Yes, sir; and I have none now.

Q. Did you state, in answer to my question, that you had no such recollection, or that there was no such paper made?

A. You asked me whether there was an agreement made, and I said no, and I think so still. I did not remember that there was a paper of any kind, and I cannot remember it now.

118 Q. Have you any doubt that this paper was made on the 5th of Nov., 1874?

A. I have no reason to doubt it.

Q. It is signed by Edward Bayer?

A. Yes, sir; it is.

(Exhibit B, C. E. F. Defendants' counsel offer in evidence the paper as identified by the witness and read the same.)

Redirect examination:

Q. How many years have you been a member of the bar of Pennsylvania?

A. Forty-nine or fifty.
Q. And you are a member of the State senate?
A. Yes, sir.

Recross-examination:

Q. You are the attorney for Mrs. Palmateer?
A. Yes, sir; I am attorney in fact and attorney at law of Mrs. Palmateer and Miss Palmateer, and was formerly of Mr. Bayer.
119 Q. You are acting in both capacities to prove this claim?
A. We are not in the habit of acting as attorneys to prove claim; if so, I would have sat down and helped tried this case.
Q. I want to know if you are attorney at law seeking to establish this claim?
A. Of Mrs. Palmateer and Miss Palmateer I am most certainly.
By the COURT. I understand you to say that Mr. Shearer and Mr. Bourman were in the house some time before you went into the room; that they were received by the ladies who came down and took you up?
A. Yes, sir; I cannot remember the length of time. She received them at the hall and took them upstairs, and then came down and requested me to go up, and retired, as my recollection is.
By the COURT. You heard them come in?
120 A. Yes, sir.
By the COURT. Do you know how long an interval had elapsed before you were called?
A. It was a few minutes. I was with Mr. Bayer downstairs. I am quite positive that the paper was signed by Mr. Bayer.

Mr. BAYER recalled for the plaintiffs.

Q. You may state whether you were present at this first interview spoken of by Mr. Shearer and Mr. Seymour.
A. I was not present at the first interview.

Cross-examination:

Q. Where did you sign this paper?
A. I signed it at the second interview.
Q. Look at that paper. (Ex. B.)
A. I suppose I signed it on the day marked there; but that paper was signed at the second interview. That is my recollection.
121 Q. Look at that signature of yours. (Agreement of Nov. 6th.)
A. Yes, sir.
Q. Do you recollect of making that paper?
A. I recollect, not of making it, but I recollect of signing it.
Q. Where were you when you signed it?
A. First downstairs, and then I was called up for the purpose of signing this paper.
Q. Did you read it over before you signed it?
A. I do not remember whether I read it or not; but it was explained to me.
DEFENDANTS' COUNSEL. Q. In making the agreement of November 6th, 1874, did you have any intent to commit a fraud upon the bankrupt act?
(Plaintiff's counsel object; objection sustained, and defendants' counsel except.)
Adjourned.

122 DEFENDANTS' COUNSEL. I would like to read, if your honor

please—I know it is in evidence—the amount due Rosanna Palmateer; it is $34,845.31.

LOUIS SANDERS sworn for defendants.

WITNESS. Q. Shall I ask my own questions before I answer them?

By PARSONS. No; go on and tell your story.

A. On the 5th or 6th of November, 1874, Mr. Bourman, who was acting at the attorney in fact for Mr. Hauselt, came to me to go with him to Mr. Bayer's house in Brooklyn, at two o'clock on the 6th, and meet him there; I went over with Mr. Bourman to Bayer's house at the time appointed, and I saw there Mr. Seymour, and, I think, both
123 Miss Palmateer and her mother; I don't think that I saw Mr. Bayer; at any rate he was not present when I first went in, and I was told that he was ill. Yes; I had some conversation with either Miss Palmateer or herself and her mother.

By Mr. ELLIOTT. That conversation we do not want. Come down to the conversation with Mr. Seymour.

A. I think Mr. Seymour was present at that conversation; Miss Palmateer was present when this agreement in my handwriting, of November 6th, was drawn up, and I think the conversation was had with her and Mr. Seymour and Mr. Bourman and myself; I cannot recollect the exact language that was used; but Mr. Seymour—this paper of November 5th, that is signed by Mr. Bayer, I either
124 brought it with me or it was shown me when I was there, and Mr. Seymour said that Mr. Bayer was unable to go on and complete the contract up there; my impression is that he gave as his reasons his illness, and he also stated that it would not be worth while to enquire further; that is my impression, and Mr. Bourman, I think, was not satisfied with the proposition until I told him that I thought it was the best proposition and the best arrangement that could be made, and that I would advise its being accepted. I then sat down and drew up both the papers; they are very much in accordance with the terms of the paper of November 5th, a little fuller—and read them over with Mr. Seymour; my impression is very clear that he took them down-stairs and they were there signed by Mr. Bayer and witnessed
125 by Mr. Seymour, and that I did not see Mr. Bayer on that day at all; in fact, I have no recollection of seeing anybody but Mr. Seymour and the ladies at the house; nothing was said by Mr. Seymour in regard to any proceedings taken by Mr. Bayer, either making an application to go into bankruptcy, or about his being in a bankrupt condition. The first time I ever heard of Mr. Bayer being a bankrupt ——

By Mr. ELLIOTT. Wait a moment, state what occurred.

A. I came there at Mr. Bourman's request; Mr. Seymour and myself talked over the agreement to be made; I brought a bill of sale, I think, with me, and Mr. Seymour said that he did not think that that would be of any benefit to Mr. Hauselt; that Mr. Bayer wanted to leave him in the same position as he was; that
126 he could not execute the contract, and that it was to the benefit of all the parties that the contract should be carried out. I think either Mr. Bourman or Mr. Seymour said—at least that is my impression—that the skins in process of tanning would spoil unless immediate steps were taken to carry on the tannery business. I did not enquire of Mr. Seymour what the facts were, or any facts that he had other than what he stated to me, and I have no recollection that Mr. Bourman inquired of any facts, or that Mr. Seymour stated to him anything

about the insolvency of Mr. Bayer, or of any application made by him or to be made by him in bankruptcy. I never heard that he made any such claim until two or three days ago, in a conversation that I had with Mr. Seymour in the court-room above. After the contracts
127 were executed Mr. Bourman and myself left, leaving the duplicate in Mr. Seymour's possession. I do not now recollect of any other fact or circumstance that took place between myself, Mr. Seymour, or Bourman at that interview other than I have stated.

Cross-examination:

Q. Where is that paper that you had yesterday in Mr. Seymour's handwriting?

A. (Producing paper.) That paper was not drawn up on the 6th of November.

Q. How many years have you been a member of the bar?

A. Since December, 1869; in New York City.

Q. Have you practiced in New York City all that time?

A. Yes, sir.

Q. How long have you been Mr. Hauselt's attorney?

A. I think since 1872 or 1873.

128 Q. Are you still his attorney?

A. His attorney at law. I never was his attorney in fact.

Q. You are still his attorney at law in New York City?

A. Yes, sir.

Q. About what time did you go over to Mr. Bayer's house?

A. I think about the time appointed; about two o'clock in the afternoon.

Q. By yourself?

A. Along with Mr. Bourman.

Q. Did he come for you?

A. I am not sure. I went by Mr. Hauselt's office on the way to the ferry.

Q. You were together?

A. Together.

Q. Did you know when you got to Mr. Bayer's house that Mr. Bourman had sent him wrapping-paper, oil, and tallow to carry on the works?

A. No.

Q. Knew nothing of that kind?

A. No.

129 Q. Not stated to you at all?

A. No.

Q. Did you receive any general instructions before you went there?

A. I had a conversation with Mr. Bourman as to what he thought he wanted. He thought he wanted a bill of sale, and I drew it up in the office; I think in general terms.

Q. Intended to cover all these hides?

A. Yes, sir.

Q. Drawn up at Mr. Bourman's request?

A. Yes, sir.

Q. Talk of it with you?

A. Yes, sir.

Q. You found Mr. Seymour then?

A. Yes, sir.

Q. Did you know Mr. Seymour before?

A. Never saw him before.

Q. Did you know he was an attorney at law?
A. I understood Mr. Bayer's lawyer was there.
Q. Did you know that he had come there for the purpose of
130 transacting business for Mr. Bayer?
A. I did not know why he was there.
Q. There was no New York attorney there at all?
A. No New York attorney. I do not know that I knew at the time distinctly that Mr. Seymour came there from Tioga.
Q. When did you first see this paper?
A. I am not sure but what I saw it on the afternoon of the 5th of November.
Q. Did you read it?
A. Yes, sir.
Q. Did you read it on the 6th?
A. My impression is that I had it on the 6th.
Q. Did you have it before you when you prepared the contract of the 6th of November?
A. That is my impression.
Q. This memorandum says "in consequence of sickness and other causes" Mr. Bayer was unable to carry out the work.
A. I did not draw that paper.
131 Q. But you read it; I am asking you what the "other causes" were?
A. I did not ——
Q. You saw the words?
A. Yes, sir.
Q. Did it occur to you to ask what the "other causes" were?
A. No. I went to Mr. Seymour with this bill of sale, and he said that the bill of sale would not accomplish what he had in view.
Q. Why did he tell you that the bill of sale would not answer the purpose?
A. He says that I did not enquire as to any other fact.
Q. Then you wilfully shut your eyes?
A. I took his advice.
Q. Then you purposely did not enquire into Mr. Bayer's situation?
A. I did not.
Q. And you did not because you thought if you did enquire you would find he was insolvent?
132 A. I did not because Mr. Seymour was his lawyer and advised me.
Q. You drew up this paper purposely to avoid the bankrupt law?
A. No.
Q. Didn't you think of the bankrupt law when drawing it?
A. I do not think I did.
Q. You had this paper before you, setting out the reasons; and you drew up a paper in which you omitted the words "other causes," and said "in consequence of ill health." Didn't you purposely omit the words "other causes" because you knew, or had reason to believe, that Mr. Bayer was insolvent?
A. I did not.
Q. Did not Mr. Seymour tell you that the bill of sale should be signed if you desired?
A. I have no doubt he was correct about that.
Q. Did not he say that you did not want it?
A. I think he is correct about that.

133 Q. Did not he add "because I have drawn up his papers in bankruptcy"?
A. I don't think he did.
Q. Didn't you know he was there for that purpose?
A. No.
Q. You didn't ask him what these "other causes" were?
A. No; I purposely did not ask him.
Q. What was the reason?
A. I did not want to inquire as to any knowledge that I might be called upon to testify to.
Q. Then the subsequent paper was a trick?
A. Not at all.
Q. You didn't enquire because you was afraid that if you did enquire you would find that this man was insolvent?
A. I took Mr. Seymour's advice.
Q. The memorandum before you was in writing, which says "in consequence of illness and other causes." You testify that you pur-
134 posely did not enquire. Now I ask you whether the reason you didn't enquire was because you knew the man was bankrupt?
A. I say no.
Q. Hadn't you reason to believe he was?
A. No; because——
Q. I am speaking of the conversation with Mr. Seymour, and by that memorandum had not you reasonable cause to suppose, and did not you suppose, that the man was insolvent?
A. I did not.
Q. What did you suppose?
A. I was informed he was very ill.
Q. Why did you not enquire into the "other causes"?
A. I had no business to enquire.
Q. Is that your notion of the practice of the law?
A. Yes, sir; it is.
Q. You were there to secure this claim of Mr. Hauselt's?
A. I was there to do whatever was right to secure the interest
135 of my client, of course.
Q. What did you suppose these "other causes" were?
A. I cannot tell you now that I had any distinct impression in regard to it. My impression was, in regard to Mr. Bayer' circumstances, that he was a wealthy man or reputed to be so.
Q. From the conversation with Mr. Seymour, and from that paper, what did you suppose the words "other causes" referred to?
A. I don't know that I can give you a distinct impression as to what I had.
Q. When Mr. Seymour told you that you had better inquire no further why did you take his advice; was he a stranger to you?
A. Yes, sir.
Q. You never saw him before?
A. No.
Q. You did not know where he was from?
136 A. I did not know distinctly. It may have been said that he was from Tioga, and may not.
Q. You knew he was Mr. Bayer's attorney?
A. Yes, sir.
Q. You knew Mr. Bayer had no other attorney there?
A. Yes, sir.

Q. You knew that this large amount of property was in Mr. Bayer's hands?

A. I knew that these hides were at the Tioga tannery.

Q. You were there for Mr. Hauselt?

A. Yes, sir.

Q. You had this memorandum saying that Mr. Bayer, in consequence of ill health and "other causes," would give up the contract; why did not you enquire what these "other causes" were?

A. Mr. Seymour said that it would be of no benefit to me to inquire.

Q. Why did you take the advice of Mr. Seymour, who was a perfect stranger to you?

A. In the first place, Mr. Seymour was counsel for Mr. Bayer.
137 It was not his duty to disclose anything more than he thought necessary. It was no business of mine, as counsel for Mr. Hauselt, to trespass on the confidence of Mr. Bayer's attorney or inquire as to things that he seemed disinclined to disclose. I am not in the habit of cross-examining counsel. If Mr. Bayer was insane or temporarily insane or had any family difficulties that might have induced him to do this it was no business of mine to enquire about it.

Q. It was not your business to enquire whether a man was temporarily insane and then get him sign this contract?

A. It was not business to enquire into matter that his attorney told me that I had better not enquire into.

Q. Is it not your business to enquire whether a man who was
138 signing a paper of very great value to your client is sane or insane?

A. No.

Q. I ask you whether it does not come to this: that you wanted to see if you could not secure Mr. Hauselt, and you shut your eyes to any knowledge at all that would affect your client?

A. I went there as Mr. Hauselt's attorney, in his interest, to do everything that I thought an attorney ought to do to secure that interest.

Q. And if you were put upon the track of information that would show that Mr. Bayer was insolvent and could not make this contract you would shut your eyes to that fact?

A. I did not say that.

Q. Did not it come to that?

A. No, sir; that is for the jury.

Q. When Mr. Seymour told you had better not enquire, you did not enquire, and the reason that you did not enquire was that you
139 were afraid?

A. I said before, if Mr. Seymour was a reputable attorney and declined and seemed unwilling to disclose any of the circumstances of his client it was no part of my duty to ask him to violate his confidence.

Q. If you thought everything was right in Mr. Bayer's financial situation, and you thought he was wealthy man, why did not you have him sign that bill of sale?

A. I will tell you why. There were two reasons for that: in the first place, my consultation with Mr. Seymour and the reading over of the contract of May 29th, 1874, of which I had very little knowledge. I did not draw it—never saw it until probably the 5th of November. It struck me that it was all that one of the parties to the contract could
140 require of the other. I did not see that Mr. Hauselt had any right to demand a bill of sale for the property if his contract did not entitle him to a bill of sale.

Q. And yet you drew the bill of sale?

A. As I told you, at the request of Mr. Bourman, after consultation.

Q. Mr. Seymour told you you had better not have a bill of sale executed?

A. He did.

Q. Was not that the reason?

A. I say that may have been a reason—all the circumstances taken together, and the fact that on a fair construction of the contract all that Mr. Hauselt could require was a performance.

Q. Did you read the contract before you came over on the 29th of May?

A. I may have done so.

Q. Don't you know that you did?

A. I may have done so.

141 Q. Had not you that contract before you before you wrote the bill of sale?

A. It is probable. If you ask me my accurate recollection I will say that I do not recollect.

Q. Did you not refer to it in the bill of sale?

A. I have no distinct recollection about it.

Q. Where is the bill of sale?

A. I don't think I ever saw it from that day to this.

Q. Don't you know what became of it?

A. No.

Q. Would you not have to have the contract before you when you wrote the bill of sale?

A. Quite probably, but I do not recollect.

Q. Did you deem it advisable to have a bill of sale instead of this contract?

A. Mr. Bourman requested me to draw the bill of sale.

142 Q. And gave you that contract? Did you advise Mr. Bourman that there was no cause for a bill of sale?

A. I think I did when I was aware of all the circumstances in the case.

Q. Did not you advise him that the bill of sale was necessary?

A. That I did not.

Q. Did not you advise him that he had better take it?

A. I don't think I did. I have no recollection that I did so. I think that in reality, in drawing that bill of sale, I simply complied with the request of Mr. Bourman—just as you would do if anybody asked you to draw a bill of sale.

Q. Did not Mr. Bourman take you over there to Mr. Bayer's house because he had had a conversation with Mr. Seymour the day before; and did not he want to bring you two together?

A. I suppose that the interview was appointed together.

143 Q. It was to get some security from Mr. Hauselt?

A. I don't know whether it was to get some security.

By the COURT. Was it for the purpose of placing Mr. Hauselt in a better position for the security of his claim than that he occupied?

A. I cannot say that. I can say that I went there to d' whatever I lawfully could as attorney to secure Mr. Hauselt's interests. I said that before. I do not know any attorney who would do otherwise.

By the COURT. There is no reflection upon you. If you did not go there for the purpose of putting Hauselt in a better position than he was in under the contract, what an earth did you go for?

144 A. I do not think I understood from Mr. Bourman exactly what Mr. Hauselt's rights were.

Q. Your office is in New York?

A. Yes, sir.

Q. How far from Mr. Bayer's house?

A. I do not know how far he lives from Fulton Ferry. If you can tell me that I can tell you. I never went to Mr. Bayer's but once.

Q. You went several miles?

A. I do not think over a mile and a half.

Q. You crossed the ferry and went a long distance?

A. Yes, sir; some distance.

Q. If you did not go there to put Mr. Hauselt in a better position than he was in under the contract, what on earth did you take all that trouble for?

A. I went over at the request of Mr. Bourman, to have a conversation with Mr. Seymour.

145 Q. Very well; I always dislike to cross-examine the profession.

Testimony closed.

The contract offered in evidence by the plaintiff's counsel; between Edward Bayer, of the first part, and Charles Hauselt, of the second part, dated 29th May, 1874, is as follows, page 2:

Articles of agreement entered into this 29th day of May, 1874, between Edward Bayer, of Brooklyn, New York, party of the first part, and Charles Hauselt, of New York City, party of the second part, witnesseth:

In consideration of certain moneys advanced, at the rate of seven per cent. per annum, to the party of the first part, for the purchase of veal and kip skins to be tanned, curried, and finished by one Charles
146 Korn, the party of the first part hereby agrees to send all the skins so tanned, curried, and finished by the said Charles Korn, said skins to be labelled and stamped with a label and stamp bearing the name of said Charles Korn, the skins to be in every way so finished as those now known in the New York market as the "Korn skin," exclusive to the party of the second part, he being sole agent for the so-called "Korn skin" in the United States, in consideration of a commission of 5 % of proceeds of all sales and a further one per cent. to cover fire insurance, storage, and labor; the said party of the second part agrees to sell all such skins to be sent him at the best market prices, the wholesale or case price only to be taken as an average in account sales, small sales to be taken to own acc't at same price; the party
147 of the second part further agrees to place all proceeds of sales of said skins, after deduction of aforementioned commission and advances for the purchase of veal and kip skins, at the disposal of the party of the first part, for his own use and benefit.

And it is further agreed that all the skins, whether green, in process of tanning, tanned, or tanned and finished, shall be considered as security for the refunding, with interest, of all the moneys advanced by the party of the second part, and that all the skins shall be insured for their full value in good companies only.

Signed, sealed, and delivered on the day and year above written.

EDW'D BAYER.
CHARLES HAUSELT,
By E. HAUSELT, *Att'y.*

Witness:
FREDERICK E. SHEARER.

148 The contract offered in evidence by the plaintiff's counsel, between Edward Bayer, of the first part, and Charles Hauselt, of the second part, dated November 6th, 1874, is as follows, page 2:

(B.)

This agreement, made the 6th day of November, 1874, between Edward Bayer, of the city of Brooklyn, State of New York, party of the first part, and Charles Hauselt, of the city, county, and State of New York, party of the second part, witnesseth:

That whereas an agreement was entered into by the parties hereto on the 29th day of May, 1874, whereby the party of the first part was, among other things, to tan, finish, and deliver to the party of the second part veal and kip skins purchased in the raw by moneys advanced by the party of the second part; and whereas the party of the first part has become ill and physically unable to complete the tanning and
149 finishing the skins now on hand at the tannery of the party of the first part, and in order that said contract or agreement may be carried out, it is hereby agreed, and the party of the second part is hereby authorized to take immediate possession and sole control of tannery, buildings, and out-houses connected therewith, of the party of the first part, in Tioga Township, Pennsylvania, and run and use the same, together with such of the materials on hand as may be necessary to finish and complete said skins now on hand in said tannery, &c., and to take possession of and sell said skins in any State as may be to the best advantage of the parties hereto, all sales guaranteed by the parties of the second part, the net proceeds of all said sales to be passed to the
150 credit of the party of the first part, after deducting advances and expenses of finishing said skins as per the terms of said agreement.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

EDW. BAYER. [SEAL.]
CHARLES HAUSELT. [SEAL.]
T. H. BRORMAN, *Att'y.*

Signed, sealed, & delivered in the presence—
C. H. SEYMOUR.

151 The contract offered in evidence by defendants, page 45, marked "Exhibit A, C. E. F.," is as follows:

Article of agreement, made and entered into this 29th day of May, 1874, between Edward Bayer, of Brooklyn, New York, party of the first part, and Charles Korn, now of Orange County, New York, party of the second part, witnesseth:

That the party of the first part agrees to buy and send to his tannery, at Tioga, Tioga County, Penn'a, about 30,000 wet salted veal skins, which the party of the second part agrees to tan, curry, and finish in his best manner, and to the full and entire satisfaction of Mr. Charles Hauselt, of 178 William street, N. Y. City, who advances the money for the purchase of the skins, and to whom the finished skins
152 shall be consigned for sale, branded with the label of the party of the second part.

For and in consideration of the labor thus performed by the party of the second part, the party of the first part agrees to pay the said party of the second part an annual salary of fifteen hundred dollars per an-

num, to begin on the first day of June, 1874, and as a further remuneration to said party of the second part said party of the first part agrees to pay said party of the second part one and a half per cent. of the net profit which said party of the first part may realize on the operation, and which is to be ascertained as follows, viz: 1st, the cost of the raw skins. 2d. The tanning, currying, and finishing of the same, estimated at one dollar per skin. 3d. The freights on the raw and finished skins.
4th. The commission and guarantee of six per cent. to be allowed
153 to Mr. Charles Hauselt. 5th. The interest on the money used in the operation, at seven per cent. per annum. The sum or sums which the aforesaid skins shall bring over and above the aforesaid expenditures shall be called the net profit, out of which the party of the second part shall receive one and one-half of one per cent. (1½%) in addition to his aforesaid salary. The party of the second part also agrees to use due diligence to tan, curry, and finish the aforesaid skins as speedily as circumstances will allow, and not to leave said party of the first part's employ as long as one skin remains unfinished.

This agreement may be finished at any time after the skins in the tannery shall all have been finished, and also by mutual consent be continued after the thirty thousand aforesaid skins shall have
154 been finished and delivered to Mr. Charles Hauselt. It is further agreed that in case the business should not prove sufficiently profitable, the party of the first part shall not be held liable to furnish the number of skins aforesaid, nor shall he be holden to pay the aforesaid salary except pro rata. In case kip skins should be bought, to wit, skins that will, finished, weigh forty-five pounds per dozen, the tanning, labor, &c., shall be counted at fifteen dollars per dozen, instead of twelve dollars, the estimated cost upon calf skins.

In witness whereof we have hereunto set our hands and seals the day and year above written.

EDWD. BAYER.
CHAS. KORN.

E. W. KOLB.

STATE OF NEW YORK,
City & County of New York, ss:

155 Be it remembered that on the 17th day of May, A. D. 1876, before me, William H. Clarkson, a notary public of the State of New York in and for the county of New York, personally appeared E. W. Kolb, a subscribing witness to the execution of the foregoing instrument, to me known, who, being by me duly sworn according to law, doth depose and say that he resides in said city of New York, that he is acquainted with Edward Bayer and Charles Korn, and knows them to be the same persons described in and who executed the foregoing instrument, and that he did see the said Edward Bayer and Charles Korn sign, seal, and as their act and deed deliver the said instrument for the use and purposes therein mentioned and set forth, and that they acknowledged in his presence that they executed the same, and that he subscribed his name as a witness thereto, and that the name
156 of this deponent thereunto set and subscribed as a witness is of this deponent's own proper handwriting.

E. W. KOLB.

Subscribed in my presence and sworn to before me this 17th day of May, A. D. 1876. Witness my hand and official seal.

[SEAL.] WILLIAM H. CLARKSON,
Notary Public for New York & County N. Y.

157 The paper marked Exhibit B, C. E. F., is as follows:

Whereas E. Bayer has about 20,000 skins (calf and kip) which he intended to consign to Charles Hauselt, of New York, but on account of sickness and other causes is unable to have said skins tanned in proper time and in proper manner, he proposes to let the said Hauselt have said skins, as they now are at the tannery in the township of Tioga, Pa., and the use of tannery and material on hand to finish said skins with, and said Hauselt shall go on and have said skins finished, and shall take and sell the same for the best price that he can obtain, and after deducting costs of skins and the amount expended by him in finishing said skins, and the cost of transportation, storage, and
158 other necessary expenses, he shall credit to said Bayer the balance or net proceeds of said skins or leather.

Nov. 5, 1874.

E. BAYER.

Copy of the demand made by the plaintiff upon the defendants.

TIOGA, PA., *Feb'y* 19, 1875.

TO CHARLES HAUSELT and CHAS. KORN:

SIRS: You are hereby notified and required forthwith to surrender to the undersigned assignee in bankruptcy of Edward Bayer all the hides, skins, leather, bark, and other property whatsoever which, on and prior to the 6th day of November, A. D. 1874, were in the possession of the said Edward Bayer, at the tannery of said Edward
159 Bayer, in the township of Tioga, Tioga Co., Pa., and which on or after the said sixth day of November, A. D. 1874, were transferred to your possession.

And S. M. Gun is hereby authorized to receive from you the aforesaid property for the undersigned.

J. HARRISON,
Assignee of E. Bayer.

160 *Charge of McKennan, C. J.*

GENTLEMEN OF THE JURY: We can not permit our sympathies to influence our judgment, and this case must be decided according to the law.

If the property in the skins in controversy here is in the defendant, or was in the defendant by the arrangement made between him and the bankrupt, the defendant is entitled to your verdict. If, on the other hand, the property in the skins was vested in the bankrupt, then the plaintiff is entitled to your verdict, subject to such conditions as I will presently call your attention to. It is, then, fundamentally a question of property, and that must be determined by the proper construction and effect of the agreement entered into between the parties dated the 29th of May, 1874. What, then, is the effect of that
161 agreement; what is the legal import of it? It is an agreement entered into between Edward Bayer, of Brooklyn, N. Y., of the first part, and Charles Hauselt, of New York City, party of the second part. It provides that the party of the second part, Mr. Hauselt, the defendant here, shall make certain advances, or in consideration of certain moneys advanced, at the rate of seven per cent. per annum, to Bayer, the party of the first part, for the purchase of veal and kip skins to be tanned, curried, finished, and so on by one Charles Korn,

the party of the first part, Bayer, stipulates to send all the skins so tanned, curried, and finished by the said Charles Korn—to be labelled, stamped, and so on—to Mr. Hauselt, the party of the second part, for the purpose of sale, and the retention out of the proceeds of the
162 sales of the sums so advanced, with the interest, five per cent. commission, and one per cent. for insurance.

Now, gentlemen, it seems to me that there is no difficulty in comprehending what the parties intended by this agreement itself. Mr. Hauselt had evidently made an arrangement, from the terms of this writing, by which he was to furnish Mr. Bayer a large amount of money—the amount is not stated here, but you have it otherwise in the evidence—a large amount of money, to enable Mr. Bayer to purchase skins and to tan them at his own tannery. Mr. Hauselt furnished the means of payment to Mr. Bayer. Mr. Bayer was to purchase—and I think you will have no difficulty in finding, from the evidence you have, did purchase—a large number of skins, sent them to his tannery at Tioga, and subjected them to the process of conversion, manufacture into leather.

163 There can be no difficulty then, gentlemen, in determining that Mr. Hauselt was not the owner of these skins. He furnished the money by which Mr. Bayer was to be enabled to buy them, but Mr. Bayer purchased the skins; the property was in him instead of in Mr. Hauselt; and this contract was simply an arrangement by which Mr. Hauselt was to be secured, so far as this writing secures him, in the reimbursement of the advances which he thus made. And when you to come to the end of this article, why, as if to exclude any doubt upon the subject as to its character, it is provided: "That all the skins, whether green or in the process of tanning, shall be considered as security for the refunding, with interest, of all the moneys advanced by the party of the second part." Now, it is irrational to hold,
164 in the face of a provision of that kind, that these parties understood that Mr. Hauselt owned these skins, for the reason that no man would dream of entering into a contract of that kind as a security for his own property.

It was obviously the intention of the parties that money should be advanced to Mr. Bayer to enable him to purchase the skins; that Mr. Bayer was therefore the owner of these skins, and that all that the parties intended by this contract was to secure Mr. Hauselt for what he advanced, for his commission, &c. If any other construction were to be given to this agreement, it seems to me it would be in the face of its plain import, and it would be in contravention of repeated decisions in Pennsylvania and of the Supreme Court of the United States.

I therefore instruct you that the legal effect of this agreement
165 was to invest the property of these skins in Mr. Bayer, and that in so far as the other provisions of the article they were understood and intended by the parties merely to provide security for Mr. Hauselt for the reimbursement of the advances which he agreed to make to Mr. Bayer. But, further, gentlemen, although it may be plainly the intention of the parties that the person who advanced the money should be secured, yet we can not give effect to such intention unless the parties have put their agreement in such form as the law requires to accomplish that result.

Now, further, the property of the skins being in Mr. Bayer, Mr. Hauselt had no right to the possession to these skins at any time while they were in the process of manufacture. He relied upon the
166 stipulation of Mr. Bayer, and that was his only reliance—upon

his good faith and compliance with the contract—that when the manufacture of the skins was completed Mr. Bayer should send them to him, put them in his possession for the purposes of sale and reimbursement, as stated in the contract.

Things continued in this condition until the 6th of November, 1874. Now, gentlemen, the further question is, Was anything done at or about that time which renders the defendant, Mr. Hauselt, liable for the value of this property to the present plaintiff in this action? It is claimed by the plaintiff that what was then done was in contravention of the bankrupt law, and that he is therefore entitled to recover.

That is the only remaining question in this case.

It appears that on the 6th of November, 1874, a new writing
167 or an additional writing was entered into by the parties to the first contract, by Mr. Bayer directly and by Mr. Hauselt through his representative and agent, Mr. Bourman. It was then agreed "that whereas an agreement was entered into by the parties herein on the 29th of May, 1874," &c. (reading from the contract of November 6th, 1874), to "said agreement."

To determine the effect of this arrangement, gentlemen, it is necessary for you to take into consideration what occurred at or about the time of its execution. It is claimed that by reason of this arrangement, and the assumption of possession by Mr. Hauselt of the property described therein, the defendant is liable for this property—for the value of it—under the provisions of the bankrupt law. To reach
168 this conclusion it is necessary that four conditions should exist; you should be satisfied of their existence by the evidence in the case:

First, it must appear that the debtor, Mr. Bayer, made a transfer of this property, or gave a security by which a preference was obtained by the creditor.

Now, I have already said to you, gentlemen of the jury, that by the terms of the original contract of May 29, 1874, as between Mr. Bayer and Mr. Hauselt, Mr. Bayer was entitled to the possession of the skins until they were finished, and that he was bound then, by reason only of the obligation of his contract, to transmit those skins to Mr. Hauselt for the purpose of sale, and for the other purposes contemplated by the contract. Mr. Hauselt could not, therefore, except by the act of Mr. Bayer, obtain these skins from Bayer's possession, and he could
169 not, therefore, except with his co-operation, make available the security which the possession of these skins would obviously give him. Now, did he obtain any advantage by this obtaining of possession? From what I stated I think that would be obvious, because without it he could not have made available the security. Independently of such possession, I ought to say to you that that writing gave him no security except so far as reliance upon the good faith of Mr. Bayer would give it to him. But he had no right which could be enforced to the possession of this property except by the voluntary act of Mr. Bayer. By stipulating, on the 6th of November, 1874, that the possession of this property should be turned over to him before the time to which he was entitled to it under the contract, and by the
170 further provision that he might sell that property in any state as might be to the best advantage of the parties toward converting it into money, and to retain his claim out of that, he did obtain an advantage over the other creditors of Mr. Bayer.

The object of the bankrupt law—the fundamental object—is to secure an equal distribution of the property of the bankrupt among all creditors,

and any arrangement by which that object is defeated is a preference within the meaning of the bankrupt law.

If you believe the evidence—and it is not to be doubted, because it is in writing so far as this question is concerned—there was an arrangement, there was a transfer of this property within the meaning of the bankrupt law by which the creditor to whom the transfer was made
171 obtained the means of paying his claim which he would not have had without such transfer and procurement of possession. The necessary effect, then, of this arrangement was to give Mr. Hauselt this preferential advantage over the other creditors, and it was a preference within the meaning of the bankrupt law.

In the next place, it must appear that the preference was taken with the object of defeating the bankrupt law. Now, gentlemen of the jury, independently of the evidence tending to show positively the existence of such intent on the part of the parties to such a transaction, where an arrangement is made between the creditor and the debtor the necessary and only result of which is to give that security, why, according to every rule of common sense, the parties are presumed to have intended the result to follow. If, then, an advantage was obtained which, aside from this transaction, would not have been available to the
172 creditor, the jury may fairly infer from what was done that it was intended that such advantage should be obtained, and therefore from the transaction they may infer the intent of the parties of the debtor to give a preference and of the creditor to accept it. But aside from this there is other evidence in the cause, to which I do not propose to call your *in*tention in detail; you will take it into consideration: the conduct of the parties; the object which it seems was intended to be accomplished by what was done on the one side and on the other. If from all the evidence you are satisfied that there was this intent animating both these parties—Mr. Bayer on the one hand and Mr. Hauselt, by his agent, on the other—why, then, you will regard that position as satisfactorily established.

173 Next it must appear that at the time of giving such preference the debtor was insolvent. Upon this question I think it is only necessary for me to call your attention to it and to say that I presume you will have no difficulty about it. You have the evidence of the bankruptcy schedule, by which it appears that he was very largely involved in debt—owed some $220,000. You have the evidence of Mr. Seymour that, upon consultation with him before he went to Brooklyn, Mr. Bayer was unable to carry on the business and pay his debts, and that he went to Brooklyn, where Mr. Bayer had already preceded him, with papers already drawn up to present to the court for voluntary proceedings in bankruptcy.

That being so, there can be no question about the fact that at this time this man Bayer was insolvent.

174 The remaining condition is that the creditor then knew at the time the preference was given, or had reasonable cause to believe, that the debtor was insolvent.

Now, as to this branch of the inquiry, gentlemen, there is some conflict of evidence, and I do not pretend to aid you in reconciling it; it is perhaps irreconcilable. But you must decide between the witnesses whether this fact is made out. You may find, as has been properly stated by counsel—giving effect as to what is proved by the conduct of the parties here—you may find, independently of the evidence of the witnesses who have been examined as to positive knowledge on the subject, that this fact is or is not made out. But you will take that

testimony into consideration in determining whether it is established or not. But if you believe the testimony of Mr. Seymour, why there is an end to any controversy on this subject, if there were no
175 other testimony in the cause than his.

Then, if you accept the testimony of Mr. Sanders as true, your conclusion would be that such fact is not made out by satisfactory evidence. But you must judge, in view of all the circumstances and in view of what you have yourself seen and heard as to the testimony of both sides' witnesses, whether the agent of the defendant on this 6th of November, 1874, was informed that Mr. Seymour had in his possession then the bankrupt papers signed and prepared for presentation or not. I say if you find that such was the fact, and that it was indicated to the agent, why there is an end to the controversy. You must take into consideration all the evidence and from it determine whether such fact was indicated to the agents at the time, or whether, irrespective of that, the agents had reasonable cause to believe
176 that Mr. Bayer then contemplated insolvency or was actually insolvent.

Every one of these conditions, gentlemen, must be proved by satisfactory evidence to enable you to find affirmatively in regard to it. If the evidence falls short of satisfying you as to any of them, then the defendant is entitled to your verdict. If all are made out, then you have a case fully proved, within the requirements of the bankrupt law, to stamp this transaction as in contravention of it. It is not necessary that you should come to the conclusion that either of the parties here were influenced by corrupt intent. Indeed, there is not the slightest evidence which would justify such an implication against either of them. Mr. Hauselt had a perfect right to do whatever might be done, without transgression of the law, to secure an honest debt—and this was
177 an honest debt—and so Mr. Bayer had a right to do whatever the law allowed to secure his creditor.

But Mr. Bayer made this transfer of his property, as evidenced by the writing of the 6th of November, 1874, and a preference resulted from that, as I have already instructed you, as the necessary effect of such arrangement; and if this transfer was made by Mr. Bayer and taken by Mr. Hauselt with the intent to defeat the operation of the bankrupt law, that is, to obtain a payment of the whole of his debt, and thus the withdrawal of the means necessary to that end from an equal distribution among the other creditors, and if, at the time such preference was given, Mr. Bayer was insolvent, and Mr. Hauselt then knew, or his agents knew—then knew or had reasonable cause to believe—that such was the case, then I say all the conditions required by the bankrupt law to make this transaction
178 legally fraudulent have been established, and your verdict should be for the plaintiff. If, however, any one of them is insufficiently proved, why the plaintiffs case must fail.

If you find then, gentlemen, as you are bound to find under the instructions of the court, in addition to what I have already said, that the property in these was in Mr. Bayer and not in Mr. Hauselt, and these other requirements are met by the evidence, the plaintiff is entitled to recover. But if, as I have already said, the plaintiff has failed to make out any one of the requirements which the bankrupt act requires to impress a fraudulent character upon the transfer, then your verdict will be for the defendant.

If the plaintiff is entitled to recover—as this property was retained

by the defendant giving a proper bond to the marshal—he is en-
179 titled to recover the value of this property in the position in which it was at the time the defendant obtained possession of it.

I believe the only evidence which you have touching that matter is supplied by the testimony of Mr. Bayer. He says, I think, those skins were worth on the average two dollars apiece, and where they had gone through the process of tanning they were worth thirty-five cents additional, and finished they were worth, I think he said, $3.00, $3.50, or $4.00. For such skins therefore as were not tanned the plaintiff would be entitled to the value of them in that condition, $2.00—that is, if you believe the evidence; it is all for you. If tanned, then you may add to the value of them in their green condition the sum stated by the witness, which was thirty-five cents. And so, as to the skins that were finished, the value stated by Mr. Bayer.

180 If, after the skins came into the possession of Mr. Hauselt, any money or labor was expended upon them by which their value was increased, their market value, of course he ought not to be held accountable for that, but only for the value of the skins as they were at the time that he obtained possession of them, adding to this such value as resulted from the progress of the tanning which did not cost him the expenditure of any money or labor.

I do not think it necessary, gentlemen, to say anything more to you about it. As I regard it, the questions in this case are very simple: In the first place, whose property was this? In the second place, did the defendant obtain a preferential advantage by the arrangement made on the 6th of November, 1874; and, if he did, was that advantage obtained with the intent—with the concurrent intent of the parties
181 to that transaction—to give him a preference; and was the bankrupt then insolvent, and did the defendant know it?

These, as I say, are the only two questions in the case, and it will be altogether unnecessary for you to give attention to the apparent embar'assments which have been thrown about it by the wide range of the discussion of it before the court.

And now, to wit, June 25th, '78, before verdict, defendants' counsel except to the charge.

(Endorsed:) No. 27. June T., 1875. Testimony and charge of court. Filed Aug't 14, 1879.

182 In the circuit court of the United States for the western district of Pennsylvania.

JEFFERSON HARRISON, ASSIGNEE IN BANKruptcy of Edward Bayer, plaintiff below and defendant in error.
vs.
CHARLES HAUSELT AND CHARLES KORN, defendants below and plaintiffs in error.

Bill of exceptions.

Be it remembered that in June session, 1875, No. 27, came Jefferson Harrison, assignee in bankruptcy of Edward Bayer, into the circuit court of the United States for the western district of Pennsylvania, and impleaded Charles Korn and Charles Hauselt in a certain plea of replevin issued out of said court, on the 20th day of Feb'y, 1875,

183 to which writ the marshal made return as follows: "Feb'y 24, 1875, replevied as within commanded 360 tanned and unfinished calf skins, 3,720 tanned and partly-finished calf skins, and 3,820 tanned calf skins, and delivered the same to the defendants, property bond being entered."

That issue having been joined between the parties on a plea of property put in by the defendant, the cause came on to be tried before a jury, who, in open court, upon the 25th day of June, 1878, did say that they found for the plaintiff the sum of $15,800, upon which verdict judgment was entered for the plaintiff, on the 26th day of March, 1879, for $15,966.70, and to which judgment this writ of error was taken by the said defendants.

That upon the trial it appeared that plaintiff was duly appointed assignee in bankruptcy of Edward Bayer, bankrupt, and held, by assignment dated January 1875, all of the estate of said bankrupt.

That said plaintiff filed a voluntary petition in bankruptcy in
184 the western district of Pennsylvania, on the 10th day of November, 1874, wherein he was adjudicated bankrupt Nov. 21, 1874, under which adjudication said assignment was made.

That bankrupt and defendant duly executed and delivered the contracts between them, dated May 29, 1874, and November 6, 1874, respectively, and which are as follows:

Article of agreement entered into this 29th day of May, eighteen hundred and seventy-four, between Edward Bayer, of Brooklyn, N. Y., party of the first part, and Charles Hauselt, of New York City, N. Y., party of the second part, witnesseth:

In consideration of certain moneys advanced, at the rate of 7% per annum, to the party of the first part, for the purchase of veal and kip skins, to be tanned, curried, and finished by one Charles Korn, the party of the first part hereby agrees to send all the skins so tanned, curried, and finished by the said Charles Korn, said skins to be labelled
185 and stamped with the label and stamp bearing the name of the said Charles Korn, the skins to be in every way so finished as those known in the New York market as the "Korn skin," exclusive to the party of the second part, he being sole agent for the so-called "Korn skins" in the United States, in consideration of a commission of 5% of proceeds of all sales, and a further 1% to cover fire insurance, storage, and labor; the said party of the second part agrees to sell all such skins to be sent him at best market prices, the wholesale or case price only to be taken as an average in account sales, small sales to be taken to own acc't at same price; the party of the second part further agrees to place all proceeds of sales of said skins, after deduction of aforementioned commissions and advances for the purchase of veal and kip skins, at the disposal of the said party of the first part, for his own use and benefit.

186 And it is further agreed that all the skins, whether green, in process of tanning, tanned, or tanned and finished, shall be considered as security for the refunding, with interest, of all the moneys advanced by the party of the second part, and that all the skins shall be insured for their full value in good companies only.

Signed, sealed, and delivered on the day and year above written.

EDW'D BAYER.
CHARLES HAUSELT,
P'r E. HAUSELT, *Att'y.*

Witness:
FREDERICK E. SCHERER.

187 This agreement, made this sixth day of November, 1874, between Edward Bayer, of the city of Brooklyn, State of New York, party of the first part, and Charles Hauselt, of the city, county, and State of New York, party of the second part, witnesseth: That whereas an agreement was entered into by the parties hereto on the 29th day of May, 1874, whereby the party of the first part was, among other things, to tan, finish, and deliver to the party of the second part veal and kip skins purchased in the raw by moneys advanced by the party of the second part; and whereas the party of the first part has become ill and physically unable to complete the tanning and finishing the skins now on hand at the tannery of the party of the first part, and in order that said contract or agreement may be carried out, it is hereby agreed, and the party of the second part is hereby authorized to
188 take immediate possession and sole control of tannery buildings and out-houses connected therewith of the party of the first part, in Tioga Township, Pennsylvania, and run and use the same, together with such of the materials on hand as may be necessary to finish and complete said skins now on hand in said tannery, &c., and to take possession of and sell said skins in any state as may be to the best advantage of the parties hereto, all sales guaranteed by the party of the second part, the net proceeds of all said sales to be passed to the credit of the party of the first part, after deducting advances and expenses of finishing said skins as per the terms of said agreement. In witness whereof the parties hereto have hereunto set their hands and seals the day & year first above written.

EDW. BAYER. [SEAL.]
CHARLES HAUSELT. [SEAL.]
T. H. BOURMAN, *Att'y.*

Signed, sealed, & delivered in the presence—
C. H. SEYMOUR.

189 That plaintiff made the following demand on defendant in writing:

TIOGA, PA., *Feb'y 19th*, 1875.

TO CHARLES HAUSELT & CHARLES KORN:

SIRS: You are hereby notified and required forthwith to surrender to the undersigned, assignee in bankruptcy of Edward Bayer, all the hides, skins, leather, bark, and other property whatsoever which, on and prior to the 6th day of November, A. D. 1874, were in the possession of the said Bayer, at the tannery of said Edward Bayer, in the township of Tioga, Tioga Co., Pa., and which, on or after the said sixth day of November, A. D. 1874, were transferred to your possession. And S. M. Gun is hereby authorized to receive from you the aforesaid property for the undersigned.

J. HARRISON,
Assignee of E. Bayer.

190 That defendant, by his agent, took possession of the property mentioned in the said contracts, including the skins herein replevied, on Nov. 7, 1874.

The bankrupt testified, on behalf of plaintiff, that he purchased the skins embraced in said contracts; that the bills were made out in his own name and were paid either by defendant or with moneys advanced by him pursuant to said contract of May 29th, 1874; that said skins

were sent to bankrupt's tannery in lots, and there put through the process of tanning and currying pursuant to said contract of May 29th, being sent to defendant as fast as the process was completed, until defendant took possession as aforesaid, up to which time there were probably less than a thousand skins sent away to defendant; that the number of skins put in process as aforesaid was about 22,000, which were worth on the average about $2.00 apiece, and 35 cts. more
191 when simply tanned and not finished, and were worth about $3.50 to $4 when finished.

On cross-examination, he testified that he certified the bills for the purchase of the skins, and the parties took them to Mr. Hauselt, who paid them, and that Mr. Hauselt purchased a few hundred skins himself.

C. H. Seymour testified, on behalf of plaintiff, that he was counsel for bankrupt, and went to Brooklyn, New York, early in November, 1874, to prepare the said petition in bankruptcy for him; that he was at bankrupt's residence, in Brooklyn, where bankrupt was in ill health and agitated in mind about said contemplated bankruptcy proceedings.

That on November 5th, 1874, Mr. Scherer, defendant's agent, and Mr. Brorman called at said residence to see Mr. Bayer about defendant's business; that witness was authorized on his part to represent Mr. Bayer; that he informed them that Mr. Bayer was not in condition, either mentally or physically, to see them; that they
192 stated that the said tanning business at Tioga was not going along as it should; that there was a lack of means for the purchase of stock, oils, or something of that kind, and that they had come to obtain further security for the performance of said contract of May 29, 1874, on the part of Mr. Bayer; that witness informed them that Mr. Bayer was incapable of further fulfilling the contract or going on with it, mentally, physically, and financially; that he had no money, no means, and that he could not do anything more with it, and that he could not give any security—no name no note; that he had none to give them; that he proposed to them that defendant should take possession under such an agreement as was embodied the next day in the contract of Nov. 6th; that they took the matter under advise-
193 ment and appointed 2 o'clock next day for a final meeting.

That Mr. Scherer and Bourman came pursuant to appointment with Mr. Sanders, defendant's counsel; that Mr. Sanders presented a bill of sale for execution by Mr. Bayer of the balance of said hides not yet delivered; that witness said he would advise Mr. Bayer to execute it if insisted on, but told them that it would do no good; that Mr. Bayer was not in a condition to place defendant in any better position than provided by the proposition of yesterday; and that it would be best for all the parties that somebody should have possession of the stock and do something with it, and on their hesitating, witness told them that Mr. Bayer's bankruptcy papers were all prepared; and that thereupon the said contract was immediately agreed to and executed; and he approved it, as it would leave the parties just
194 where they were as far as the law is concerned; and that witness immediately went to Tioga with Mr. Scherer, Houselt's agent, and put him in possession of the aforesaid skins and of said tannery where they were in process, for the purpose of carrying out the provisions of the contract of May 29th, 1874, pursuant to the contract of November 6, 1874, and he remained in possession accordingly; that witness himself was very much surprised at the revelation of bankrupt's financial condition, as he was reputed to be very wealthy,

and a great many still express disbelief as to his failure after this occurrence.

Defendant testified, on his own behalf, that Mr. Bayer was reputed to be wealthy, and had good credit.

Defendant Hauselt proved that he had paid for the purchase of skins for tanning, under contract of May 29th, 1874, up to 6th of November, 1874, the sum of $42,872.72.

195 Defendant's counsel here offered in evidence Exhibits One to Forty, inclusive, and read all except 1, 3, 18, 19, 22, 26, 27, 28, 29, 30, 32, 34 to 38, and 40; to all which plaintiff objected, and they were excluded, subject to defendant's exception.

Said exhibits were the checks of defendant Hauselt to the order of vendors of skins, in payment of bills for same, made out to Bayer, the bankrupt, and approved by him as correct, dated between May 29 and Nov. 5th, 1874.

Defendant continued: And he made outlays after November 6th, 1874, in carrying on said tanning and finishing.

Defendant offered to prove the cost put upon the said skins by defendant from Nov. 6th, 1874, to February 24th, 1875, showing the amount expended by him in carrying on the tanning establishment.

Offer objected to.

196 By the COURT. The offer in this form is rejected, but the defendant is permitted to prove the value of the labor and skill added by him to the skins in the process of tanning and finishing after he obtained possession of them.

Objection sustained. Defendant excepted.

Defendant now offered to prove the whole amount of the advances made by Mr. Hauselt under these two contracts, to include the finishing of the skins and their sale.

Plaintiff's counsel object to any advances made after the sixth day of November, 1874.

By the COURT. Objection sustained, except as before modified.

Defendant offered to show that he expended the sum of $15,789.10 in tanning, finishing, and disposing of these skins between the 6th of November, 1874, and the 26th of June, 1875, in carrying out the contracts of May 29 and Nov. 6th, 1874.

Plaintiff's counsel objects. Objection sustained, offer rejected, and defendant's counsel excepts.

197 By the COURT. The objected attempted by the evidence is to show the sums expended by the defendant in finishing the skins after the institution of the bankruptcy proceedings, and for this reason the offer of the evidence is rejected.

Defendants offer to prove the expenditure of the same amount between the same dates by the defendant in tanning, finishing, and vending the skins.

Plaintiff's counsel object to any evidence of advancements or of expenditures of any kind after the sixth of November, 1874, and particularly to any expenditures for vending the skins.

2d. Because this is not the best method of obtaining the value of the skins. Objection sustained; exception by defendant.

Defendant offered to prove that a balance is due the defendant from the bankrupt, after all the skins had been finished and disposed
198 of by the regular course of sale, of $13,089.50, with interest from July 6th, 1876, over and above the receipts of the sales of the skins tanned; this for the purpose of showing that the bankrupt, un-

der his contract with defendant Hauselt, had no interest in the property the recovery of which is sought in this action.

Plaintiff's counsel object. Objection sustained. Defendant's counsel excepts.

Mr. Scherer testified, on behalf of defendant, that he was agent for defendant; that the bankrupt's reputation for financial standing was very good; that at the interviews testified to there was a good deal said about Bayer's ill health and inability to attend to business, but that Mr. Seymour did not say anything about Mr. Bayer's being insolvent, and that he first heard of it on Nov. 7, 1874, at Tioga,
199 after he had taken possession of the tannery for defendant under the contract of Nov. 6; that he continued to run said tannery for defendant pursuant to said contract; that the skins, as soon as finished, were packed and sent to defendant at New York as before; that at the interviews with Mr. Seymour, testified to by him, Mr. Brorman did not say anything about security for the advances made by defendant in the tanning business, nor that he had heard Bayer was going to fail or was hard up; that nothing was said about that at all, and that no reason was assigned for asking defendant to carry on the business except bankrupt's ill health; and that Mr. Bourman had died since the commencement of this action.

Mr. Seymour, being recalled on behalf of plaintiff, reaffirmed his former testimony.

200 Mr. Sanders testified, on behalf of defendant, that he was present as defendant's counsel at said interview of November 6, and denied that anything was said by Mr. Seymour in regard to any proceedings taken by Mr. Bayer, either about making an application to get into bankruptcy or about being in a bankrupt condition; that witness took a bill of sale with him, but that Mr. Seymour said he did not think that would be of any benefit to Mr. Hauselt; that Mr. Bayer wanted to have him in the same position as he was; that he would not execute the contract, and that it was to the benefit of all the parties that the contract should be carried out; that it was said that the skins in process of tanning would spoil unless immediate steps was taken to carry out the tannery business. Witness also denied that he had
201 any knowledge of the insolvency of bankrupt at the time of the execution of the contract of Nov. 6, 1874; that it was said that Mr. Bayer was in such a condition of health as to be unable to carry on the business.

At the close of the plaintiff's case defendant moved for a nonsuit, on the ground that neither the bankrupt nor plaintiff, his assignee, ever had any title in the skins in question.

Decision reserved and here rendered against the motion. Defendant excepts.

The charge.

The court then charged the jury as follows:

I therefore instruct you that the legal effect of this agreement (of May 29, 1874) was to invest the property of these skins in Mr. Bayer, and that in so far as the other provisions of the article they were understood and intended by the parties merely to provide security
202 for Mr. Hauselt for the reimbursement of the advances which he agreed to make to Mr. Bayer.

Now, further, the property of the skins being in Mr. Bayer, Mr.

Hauselt had no right to the possession of these skins at any time while they were in process of manufacture.

He relied upon the stipulations of Mr. Bayer, and that was his only reliance—upon his good faith and compliance with the contract—that when the manufacture of the skins was completed Mr. Bayer should send them to him, put them in his possession for the purpose of sale and reimbursement, as stated in the contract.

To reach this conclusion (that defendant is liable) it is necessary that four conditions should exist:

First. It must appear that the debtor, Mr. Bayer, made a transfer of this property, or gave as security by which a preference was obtained by the creditor.

203 Secondly. That the preference was obtained with the object of defeating the bankrupt law.

Thirdly. That at the time of giving such preference the debtor was insolvent.

Fourthly. That the creditor then knew at the time the preference was given, or had reasonable cause to believe, that the debtor was insolvent.

Mr. Hauselt could not, without the act of Mr. Bayer, obtain these skins from Mr. Bayer's possession; and he could not, therefore, except with his co-operation, make available the security which the possession of these skins would obviously give him. Now, did he obtain any advantage by this obtaining of possession? From what I stated, I think that would be obvious, because without it he could not have made available the security independent of such possession. I

204 ought to say to you that that writing gave him no security, except so far as reliance upon the good faith of Mr. Bayer would give it to him; but he had no right which could be enforced to the possession of this property, except by the voluntary act of Mr. Bayer. By stipulating, on the 6th of November, 1874, that the possession of this property should be turned over to him before the time at which he was entitled to it under the contract, and by the further provision that he might sell that property in any state as might be to the best advantage of the parties toward converting it into money, and to retain his claim out of that, he did obtain an advantage over the other creditors of Mr. Bayer.

The object of the bankrupt laws—the fundamental object—is to secure an equal distribution of the property of the bankrupt among

205 all the creditors, and any arrangement by which that object is defeated is a preference within the meaning of the bankrupt law.

If you believe the evidence—and it is not to be doubted, because it is in writing, so far as this question is concerned—there was an arrangement, there was a transfer of this property within the meaning of the bankrupt law by which the creditor to whom the transfer was made obtained the means of paying his claim, which he would not have had without such transfer and procurement of possession. The necessary effect of this arrangement was to give Mr. Hauselt this preferential advantage over the other creditors, and it was a preference within the meaning of the bankrupt law.

In the next place, it must appear that the preference was taken with the object of defeating the bankrupt law. Now, gentlemen of

206 the jury, independently of the evidence tending to show positively the existence of such intent on the part of the parties to such a transaction, where an arrangement is made between the debtor

and the creditor the necessary and only result of which is to give that security, why, according to every rule of common sense, the parties are presumed to have intended the result to follow.

Next, it must appear that, at the time of giving such preference, the debtor was insolvent. There can be no question about the fact that at this time this man Bayer was insolvent.

The remaining condition is that the creditor then knew, at the time the preference was given, or had reasonable cause to believe, that the debtor was insolvent. You may find, independently of the evidence of the witnesses who have been examined as to positive knowledge
207 on the subject, that this fact is or is not made out.

It is not necessary that you should come to the conclusion that either of the parties here were influenced by corrupt intent. Indeed, there is not the slightest evidence which would justify such an implication against either of them; but Mr. Bayer made this transfer of his property, as evidenced by this writing of the 6th of November, 1874, and a preference resulted from that, as I have already instructed you, as the necessary effect of such arrangement; and if this transfer was made by Mr. Bayer and taken by Mr. Hauselt with intent to defeat the operation of the bankrupt law, that is, to obtain a payment of the whole of his debt, and thus the withdrawal of the means necessary to that end from an equal distribution among the other creditors, and if at the time such preference was given Mr. Bayer was insolvent,
208 and Mr. Hauselt then knew or had reasonable cause to believe that such was the case, then I say all the conditions required by the bankrupt law to make this transaction legally fraudulent have been established, and your verdict should be for the plaintiff.

In the first place, whose property was this? In the second place, did the defendant obtain a preferential advantage by the arrangement made on the 6th of November, 1874, and, if he did, was that advantage obtained with the intent, with the concurrent intent, of the parties to that transaction to give him a preference, and was the bankrupt then insolvent, and did the defendant know it? These, I say, are the only two questions in the case.

The defendant duly *accepts* to those parts of the charge which charge as follows:

209 I. That the legal effect of the contract of May 29th, 1874, was to vest the property in the skins in Mr. Bayer, the bankrupt, instead of in defendant.

II. That defendant's only reliance was on bankrupt's good faith and compliance with the contract, instead of on the skins as security.

III. That defendant was not entitled to take the possession of the skins as he did before the manufacture was completed, because he was entitled so to do on the acknowledged inability and failure of bankrupt to perform and complete the manufacture under the contract of May 29th, 1874, as defendant thereupon did according to the agreement of Nov. 6th, 1874.

IV. That there are only the four conditions specified necessary to the liability of defendant, because they do not include the necessary condition of actual knowledge by defendant that a fraud on the
210 bankrupt law was intended, and because the question of fraudulent intent was not submitted to the jury.

V. That any arrangement by which an equal distribution of the property of the bankrupt is defeated is a preference within the meaning of the bankrupt law, because this includes transfers that are not preferential.

VI. That the necessary effect of the defendant's arrangement with bankrupt was to give defendant a preferential advantage over the other creditors, and that it was therefore a preference within the meaning of the bankrupt law, and that where an arrangement is made between the creditor and debtor the necessary and only result of which is to give that security which defendant took, that the parties must be presumed to have intended the result (a preference taken with
211 the object of defeating the bankrupt law) to follow, because this is equivalent to instructing the jury that there was here a preference taken with the object of defeating the bankrupt law, instead of leaving the question to their determination as a fact.

VII. That defendant's arrangement with bankrupt was a preference within the meaning of the bankrupt law, because it takes from the jury the determination of the fact.

VIII. That the jury might find, independently of the witnesses who testified as to positive knowledge on the subject, that the defendant knew or had reasonable cause to believe the debtor to be insolvent, because this is equivalent to an instruction that the circumstances alone sustain this conclusion.

IX. That it is not necessary to find that either of the parties was influenced by a corrupt intent, because this, taken in connection with the matter mentioned in exceptions V, VI, VII, is equivalent to
212 an instruction that it is not necessary to find an actual fraudulent intent, but that the circumstances alone may determine a fraud in law.

X. That defendant likewise excepts to the charge as a whole, because it has the effect of leaving no question to the jury except as to defendant's knowledge or reasonable cause to believe the debtor insolvent.

N. SANDERS,
ARMSTRONG & LINN,
Att'ys for Pl'ff in Error.

I do hereby certify that the offers of evidence above stated were made by the counsel for defendants at the trial of the said cause; that they were objected to by the counsel for the plaintiff and were rejected by the court, to which ruling the counsel for the defendants then excepted.

213 That the court did charge the jury as above stated, to which charge the defendant's counsel then, and before verdict, excepted as above stated, all of which exceptions were duly allowed.

Witness my hand and seal this twenty-sixth day of March, 1879.

W. McKENNAN, [SEAL.]
Cir. Judge.

(Endorsed:) C. C. U. S. W. D. Pa. No. 27. June T., 1875. Harrison vs. Hauselt. Bill of exceptions. Filed Aug't 14, 1879.

214 In the circuit court of the United States for the western district of Pennsylvania, of June term, 1875.

JEFFERSON HARRISON, ASSIGNEE IN BANKRUPTCY of Edward Bayer, &c., *vs.* CHARLES HAUSELT AND CHARLES KORN, &c. } No. 27. Replevin.

Assignment of errors.

The counsel for the plaintiff in error respectfully assign as error:

1. First. The court erred in rejecting the evidence offered by defend-

ant's counsel, viz: Exhibits 1, 3, 18, 19, 22, 26, 27, 28, 29, 30, 32, 34 to 38, and 40, which exhibits were the checks of the defendant Hauselt to the order of the vendors of skins, in payment of bills for same, made out to Bayer, the bankrupt, and approved by him as correct, dated between May 29 and Nov. 5, 1874.

2. Second. The court erred in rejecting the evidence offered on behalf of the defendants as follows, viz:

215 "DEFENDANT'S COUNSEL. I offer to show the cost put upon the skins by Mr. Hauselt from the 6th of November, 1874, until the 24th day of February, 1875, showing the amount expended by him in carrying on the tanning establishment.

"The COURT. You propose to show the cost of the labor expended upon the skins from the 6th of November to the 24th of February? There is a right way and a wrong way. I suppose Mr. Hauselt is not accountable for what he added by his labor and skill after they left the hands of the bankrupt. But I do not see that you propose to prove that. You can show the value of what was done to those skins by Mr. Hauselt after he obtained possession.

"(Plaintiff's counsel object to the offer.)

"The COURT. The offer in this form is rejected; but the defendant is permitted to prove the value of the labor and skill added by him to the skins in the process of tanning and finishing after he obtained possession of them.

216 "(Objection sustained and defendant's counsel except.)"

3. Third. The court erred in rejecting the evidence offered on behalf of the defendant as follows:

"DEFENDANT'S COUNSEL. I now offer to prove the whole amount of the advances made by Mr. Hauselt under these two contracts, to include the finishing of the skins and their sale.

"(Plaintiff's counsel object to any advances made after the 6th of November, 1874.)

"By the COURT. Objections sustained, except as before modified."

4. Fourth. The court erred in rejecting the evidence offered on behalf of the defendants as follows:

"DEFENDANT'S COUNSEL. I offer to show that we expended the sum of $\$15{,}789\frac{10}{100}$ in tanning, finishing, and disposing of these skins between the 6th of Nov., 1874, and the 26th of June, 1875, in carrying out the contracts of May 29th and Nov. 6th, 1874.

217 "(Plaintiff's counsel objects. Objections sustained, offer rejected, and defendant's counsel except.)

"By the COURT. The object attempted by the evidence is to show the sums expended by the defendant in finishing the skins after the institution of the bankruptcy proceedings, and for this reason the offer of the evidence is rejected.

"DEFENDANT'S COUNSEL. I offer to prove the expenditure of the same amount between the same dates by the defendant in tanning, finishing, and vending the skins.

"(Plaintiff's counsel object to any evidence of advancements or expenditures of any kind after the 6th of Nov., 1874, and particularly to any expenditures from vending the skins.

"2d. Because this is not the best method of obtaining the value of the skins.

"Objections sustained; exception by defendant."

5. Fifth. The court erred in rejecting the evidence offered on behalf of the defendants as follows:

218 "Defendant offered to prove that a balance is due the defendant

"1st. It must appear that the debtor, Mr. Bayer, made a transfer of this property or gave a security by which a preference was obtained by the creditor.

"Now, I have already said to you, gentlemen of the jury, that by the terms of the original contract of May 29th, 1874, as between Mr. Bayer and Mr. Hauselt. Mr. Bayer was entitled to the possession of the skins until they were finished, and that he was bound then by reason only of the obligation of his contract to transmit those skins to Mr. Hauselt for the purpose of sale and for other purposes contemplated by the contract. Mr. Hauselt could not, therefore, except by the act of Mr. Bayer, obtain these skins from Bayer's possession, and he could not therefore, except with his co-operation, make available the security which the possession of these skins would obviously give him.

"Now, did he obtain any advantage by this obtaining of possession? From what I stated, I think, that would be obvious, because without it he could not have made available the security. Independently of such possession I ought to say to you that that writing gave him no security, except so far as reliance upon the good faith of Mr. Bayer would give it to him. But he had no right which could be enforced to the possession of this property, except by the voluntary act of Mr. Bayer. By stipulating on the 6th of November, 1874, that the possession of this property should be turned over to him before the time at which he was entitled to it under the contract, and by the further provision that he might sell that property in any state as might be to the best advantage of the parties toward converting it into money, and to retain his claim out of that, he did obtain an advantage over the other creditors of Mr. Bayer. The object of the bankrupt law—the fundamental object—is to secure an equal distribution of the property of the bankrupt among all creditors, and any arrangement by which that object is defeated is a preference within the meaning of the bankrupt law. If you believe the evidence—and it is not to be doubted, because it is in writing so far as this question is concerned—there was an arrangement, there was a transfer of this property within the meaning of the bankrupt law, by which the creditor to whom the transfer was made obtained the means of paying his claim, which he would not have had without such transfer and procurement of possession. The necessary effect, then, of this arrangement was to give Mr. Hauselt this preferential advantage over the other creditors, and it was a preference within the meaning of the bankrupt law.

"In the next place, it must appear that the preference was taken with the object of defeating the bankrupt law. Now, gentlemen, of the jury, independently of the evidence tending to show positively the existence of such intent on the part of the parties to such a transaction, where an arrangement is made between the debtor and creditor the necessary and only result of which is to give that security, why, according to every rule of common sense, the parties are presumed to have intended the result to follow. If, then, an advantage was obtained which, aside from this transaction, would not have been available to the creditor, the jury may fairly infer from what was done that it was intended that such advantage should be obtained, and therefore from the transaction they may infer the intent of the parties—of the debtor to give a preference and of the creditor to accept it."

11. Eleventh. The court erred in charging the jury as follows:

"The remaining condition is that the creditor then knew at the time

the preference was given, or had reasonable cause to believe, that the debtor was insolvent. * * *

229 "You must judge, in view of all the circumstances, and in view of what you have yourselves seen and heard as to the testimony of both sides' witnesses, whether the agent of the defendant, on this 6th of November, 1874, was informed that Mr. Seymour had in his possession then the bankrupt papers signed and prepared for presentation or not. I say if you find that such was the fact, and that it was indicated to the agent, there is an end to the controversy. You must take into consideration all the evidence, and from it determine whether such fact was indicated to the agents at the time, or whether, irrespective of that, the agents had reasonable cause to believe that Mr. Bayer then contemplated insolvency, or was actually insolvent."

12. Twelfth. The court erred in charging the jury as follows:

"Every one of these conditions, gentlemen, must be proved by satisfactory evidence to enable you to find affirmatively in regard to

230 it. If the evidence falls short of satisfying you as to any of them, then the defendant is entitled to your verdict. If all are made out, then you have a case fully proved within the requirements of the bankrupt law to stamp this transaction as in contravention of it. It is not necessary that you should come to the conclusion that either of the parties here were influenced by corrupt intent. Indeed, there is not the slightest evidence which would justify such an implication against either of them."

13. Thirteenth. The court erred in charging the jury as follows:

"But Mr. Bayer made this transfer of his property, as evidenced by the writing of the 6th of November, 1874, and a preference resulted from that, as I have already instructed you, as the necessary effect of such arrangement; and if this transfer was made by Mr. Bayer and taken by Mr. Hauselt with intent to defeat the operation of the

231 bankrupt law, that is, to obtain a payment of the whole of his debt, and thus the withdrawal of the means necessary to that end from an equal distribution among the other creditors, and if at that time such preference was given Mr. Bayer was insolvent, and Mr. Hauselt then knew, or his agents *knew* then knew, or had reasonable cause to believe, that such was the case, then I say all the conditions required by the bankrupt law to make this transaction legally fraudulent have been established, and your verdict should be for the plaintiff."

14. Fourteenth. The court erred in charging the jury as follows:

"As I regard it, the questions in this case are very simple. In the first place, whose property was this? In the second place, did the defendant obtain a preferential advantage by the arrangement made on the 6th of November, 1874; and, if he did, was that advantage ob-

232 tained with the intent, with the concurrent intent, of the parties to that transaction, to give him a preference, and was the bankrupt then insolvent, and did the defendant know it? These, as I say, are the only two questions in the case, and it will be altogether unnecessary for you to give attention to the apparent embarrassments which have been thrown about it by the wide range of the discussion of it before the court."

15. Fifteenth. The court erred in that these conditions enumerated in the charge as necessary to constitute the transaction of the 6th November, 1874, a violation of the bankrupt law excluded from the consideration of the jury all question of corrupt intent, and was equivalent to an instruction that it was not necessary to find an actual fraudulent

intent, but that the circumstances alone may determine a fraud in law.

16. Sixteenth. The court erred in that they did not dismiss the
233 suit for want of jurisdiction, the action being at law and the remedy, if any, being in equity only.

ARMSTRONG & LINN,
Att'ys for Pl'ff in Error.

(Endorsed:) No. 27. June T., 1875. C. CourtU. S., W. D. Pa. Harrison vs. Hauselt. Specifications of error. Filed August 14, 1879.

234 UNITED STATES OF AMERICA,
Western District of Pennsylvania, ss:

[SEAL.] I, B. S. Bentley, jr., clerk of the circuit court of the United States for the western district of Pennsylvania, at Williamsport, do hereby certify that the within and foregoing is a true copy and correct transcript of the whole record and proceedings in the case wherein Jefferson Harrison, assignee in bankruptcy of Edward Bayer, is plaintiff, and Charles Hauselt and Charles Korn are defendants, No. 27, June term, A. D. 1875, so full and entire as the same remains of record and on file in my office.

Witness my hand and the seal of said court, at Williamsport, this 18th day of September, A. D. 1879.

B. S. BENTLEY, JR., *Clerk.*

(Indorsement on cover:) No. 253. Charles Hauselt and Charles Korn, plaintiff' in error, vs. Jefferson Harrison, assignee in bankruptcy of Edward Bayer. W. Pennsylvania C. C. U. S. Filed 20th September, 1879.

THE SUPREME COURT OF THE UNITED STATES.

CHARLES HAUSELT AND CHARLES KORN,

Plaintiffs in Error,

vs.

JEFFERSON HARRISON, ASSIGNEE IN BANKRUPTCY OF EDWARD BAYER,

Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

STATEMENT AND POINTS FOR PLAINTIFFS IN ERROR.

LEWIS SANDERS,

Counsel for Plaintiffs.

BURGOYNE, Law Case Printer (Law Telephone 587), 29 Rose Street, N. Y.

Supreme Court of the United States.

CHARLES HAUSELT and CHARLES KORN,
Plaintiffs in Error,

vs.

JEFFERSON HARRISON, Assignee in Bankruptcy of EDWARD BAYER,
Defendant in Error.

Statement.

Jefferson Harrison as assignee in bankruptcy of Edward Bayer, who was adjudicated a bankrupt January 18th, 1875, upon his voluntary petition, filed November 10th, 1874, replevied from Charles Hauselt and Charles Korn 7,900 calf skins, some tanned and finished, some partly finished and the rest only tanned (fol. 22). Hauselt counter-bonded the goods and gave security. The skins were in the possession of Hauselt, Korn acting as his agent, superintending the tanning and finishing of the skins at the tannery owned by Edward Bayer, at Tioga, Pa.

The assignee's right to replevy the goods turns upon the construction of two agreements between Bayer and Hauselt, which will be found at pp. 51 and 52 of the case, bearing date May 29, and November 6, 1874.

By the agreement of May 29th, Hauselt was to advance Bayer money at 7% per annum, in the purchase of veal and kip skins to be tanned, curried and finished by one Charles Korn. After which all the skins stamped with the name "Charles Korn," were to be sent exclusively to Hauselt; who was the sole agent for the sale of the "Korn skins." Hauselt was to sell the skins and to receive a commission therefor of

5% and 1% in addition for expenses. "All the proceeds of the "sales of said skins, after deduction of the aforementioned "commissions and advances of the purchase of the skins," were to be placed by Hauselt at the disposal of Bayer.

"And it is further agreed that all the skins, whether green, "in the process of tanning, tanned, or tanned and finished shall "be considered as *security* for the refunding with interest of all "the moneys advanced by" Hauselt—p. 51.

By the above contract the *possession* of skins was at no time to be in Bayer, the bankrupt, they were to be curried and finished by Korn—stamped "Charles Korn," sent to Hauselt, who was the sole agent for the "Korn Skin," by him sold, the net proceeds only belonging to Bayer. Neither the right to the possession nor the right to sell were in Bayer. The *jus disponendi* is inseparable from absolute dominion over property. By agreement the parties may (as between themselves) apportion the various attributes of property as they see fit, so it be not contrary to statute. Possession, right of possession, sale, power of sale, title, proceeds.

The sum and substance of the agreement was to continue in Hauselt a right, which the contract recognized, to his exclusive agency for the sale of the "Korn Skins," and a commission for the sale and 1 per cent. for expenses. Bayer's title was confined to the *net proceeds.*

If Bayer had sold the skins elsewhere Hauselt would have had an action in trover against him.

Under this agreement Hauselt paid out for the skins from May 29th to November 6th, 1874, $42,872.72 (p. 54). The bills for these skins were made out in Bayer's name and sent to Hauselt for payment, and the skins were sent to Bayer's tannery in Tioga, and then as fast as they were tanned and finished by Korn, they were shipped to Hauselt at New York City and sold by him (p. 52-53).

In November, 1874, Bayer had become embarrassed in circumstances; he was in ill health, unable to carry on his tannery, and agitated mentally about contemplated bankruptcy. Hauselt's agents learning that the tanning business was not going along as it should, called on Bayer at Brooklyn, N. Y., and there learned that Bayer was—"mentally, physically, and financially unable to complete his contract" of May 29 (p. 53, fol. 102). Hauselt had then paid out for the skins $42,487.72. Bayer's counsel,

from Tioga, was there, and had prepared papers for Bayer for a voluntary bankruptcy, of which fact he said he informed Hauselt's agents. After some negotiations, the contract for November 6th, 1874, was executed, and under it Hauselt, on the next day took possession of Bayer's tannery for the purpose of carrying out the agreement of May 29, by tanning and finishing the skins on hand, many of them in the vat, which might otherwise have become a total loss.

The agreement of November 6th recites the agreement of May 29, 1874, and the fact of Bayer's inability to perform his part of it (p. 52); it then authorizes Hauselt—"to take immediate possession and sole control of tannery buildings and outhouses" of Bayer at Tioga," and such materials now on hand, as may be "necessary to finish and complete said skins, &c., and to take "posssession of and sell said skins in any state as may be to "the best advantage of Bayer and Hauselt," all sales guaranteed "by Hauselt, the net proceeds of sales, after deducting the advances and expenses, as per agreement of May 29, to be "credited to Bayer" (p. 52, fols. 187–8).

This agreement, which insured the performance of Bayer's part of the contract, and his right to call for the net proceeds of the sales of the skins, with the additional security of a guaranty of these sales by Hauselt, without extra compensation to him, is claimed to be in fraud of the Bankrupt Act, as giving Hauselt a a preference or some advantage to which he was not entitled under the agreement of May 29. 1874. Hauselt spent $15,789.10 after November 6th, in finishing the skins (fol. 96), and made a loss on the whole contract of $13,089.50, over and above his advances and commissions (fol. 198 p. 54).

There was no evidence on the trial as to any property but the skins, and no recovery except for them.

The Court charged the jury as matter of law that the agreement of November 6th, was preferential under the Bankrupt Act, and submitted to them as the only question of fact, whether Hauselt knew or had reasonable cause to believe Bayer to be insolvent.

Under this charge the jury found a verdict for Harrison, the assignee, for the sum of $15,800, on the 25th of June, 1878. The jury awarded the assignee a verdict for the recovery of 7,800 skins, and assessed the value at $2 a skin. Judgment signed and docketed, March 26, 1879, for $15,966.70 (p. 2, fol. 4).

A motion for a new trial and in arrest of judgment was denied.

Assignment of Errors.

1st. To the submission of the cause to the jury: there was no evidence to bring the cause within the provisions of the Bankrupt Act.

First, because the agreement of November 6th was valid and no preference and stands; second, if invalid, it left the agreement of May 29th in full force, which gave Hauselt *inter partes*, a lien upon the skins as security for his advances, and the sole right to dispose of them. Korn was in possession, as agent of both parties, to do the tanning, and ship the goods to Hauselt. The incidental fact that the tannery was Bayer's did not put the skins in his possession.

2d. That the Court charged that the legal effect of the agreement of May 29th was to vest the title to the skins in Bayer (fols. 202, 209).

3d. In charging the jury as matter of law, that the agreement of May 29th gave Hauselt no security in the skins for his advances, but only a personal guaranty in Bayer's good faith in compliance with his contract.

4th. That the Court charged that Hauselt was not entitled to take possession of the skins at any time while in process of manufacture, even with Bayer's consent, and admitted inability to perform (fols. 202, 209).

5th. That the Court in charging the jury what were the necessary facts to be proved to enable the plaintiff below to recover, did not include *actual knowledge* by Hauselt that a fraud upon the Bankrupt Act was intended (fols. 203, 209–210).

The Court charged the conditions of recovery to be:

" To reach this conclusion (that defendant is liable) it is neces-
" sary that four conditions should exist:

" First. It must appear that the debtor, Mr. Bayer, made a
" transfer of the property, or gave a security by which a pref-
" erence was obtained by the creditor.

" Secondly. That the preference was obtained with the ob-
" ject of defeating the bankrupt law.

" Thirdly. That at the time of giving such preference, the debtor was insolvent.

" Fourthly. That the creditor then knew at the time the

" preference was given, or had reasonable cause to believe, that " the debtor was insolvent."

The jury are nowhere charged that it was essential that it should be proved that Hauselt *knew* that a fraud upon the Act was intended. On the contrary, the Court charged that that was the legal effect of the contract of November 6th, and that the parties must be presumed to have intended that as the "necessary and only result" of that act (folio 206, pp. 56–7), and then the Court adds:

" It is not necessary that you should come to the conclusion " that either of the parties here were influenced by a corrupt " intent. Indeed there is not the slightest evidence which " would justify such an implication against either of them" (folios 207, p. 57).

6th. That the Court in charging the jury that the fundamental object of the Bankrupt Law was to secure an equal distribution of the bankrupt's property, and any arrangement by which that is defeated is a preference, should have qualified the charge by reference to the condition of the property under the bankrupt's existing contracts and transfers, which are not *per se* preferential (folios 205, 210).

7th. To the charge that there was a preference taken (folios 206, 210, 211).

8th. To that part of the charge which makes Hauselt's *knowledge* that a *fraud* upon the Bankrupt Act *was intended* a question of law for the Court upon the agreement of November 6th, and not a question of fact for the jury (folios 206–7, 212).

9th. Because the charge as a whole left no question of fact to the jury, but Hauselt's knowledge or reasonable cause to believe Bayer insolvent (folio 212).

10th. The assignment of errors (pp. 59–64), and the exceptions to excluded evidence (p. 54), are also referred to here as part of the assignment of errors on this brief.

11th. Hauselt offered to show that his advances, etc., more than covered the value of the skins; that he was a loser on the contract to the extent of $13,089.50 (folio 189).

This was rejected. It bore upon the question of a fraudulent intent, and upon the interest which Bayer had in the skins.

12th. Again, on cross-examination, the bankrupt is asked (folios 121 and 129).

Q. In making the agreement of November 6th, did you have any intent to commit a fraud upon the Bankrupt Act?

> Plaintiff's counsel objects. Objection sustained. Defendant below excepts. If the *intent* is essential and is a question of fact to be proved on cross-examination of plaintiff's witness, the party accused of the fraudulent intent should be permitted to tell the facts to the jury.

13th. The excluded agreement between Bayer and Korn (p. 60), shows that Korn was to do the tanning to *Hauselt's satisfaction*, and the skins were then to be consigned to Hauselt for sale, who advanced the funds for the purchase of the skins." Hauselt could waive performance of the tanning; at any rate, both Hauselt and Bayer together could make Korn, Hauselt's agent, to complete the tanning and carry out the contract at Hauselt's expense, and without violating any provision of the Bankrupt Act.

14th. By the judgment below the security of the loans of money by Hauselt on the skins in their purchase or "the *security* for those loans made in good faith on the occasion of making them is invalidated, contrary to the express provision of the Bankrupt Act as amended by C. 390, Sec. 11, Sess. L., 1874, Vol. 18, p. 180.

15th. Substantially the same grounds were urged on a motion for a new trial and in arrest of judgment. The motion was denied (pp. 9 and 10).

POINTS.

I. ESSENTIALS TO A RECOVERY BY THE ASSIGNEE.

At the time of transfer the bankrupt must be: 1st. Insolvent, or in contemplation thereof. 2d. The transfer must be made with a view to giving a preference. 3d. The transferee must have reasonable cause to believe the bankrupt to be insolvent. 4th. The transferee must "*know*" that a fraud upon the Act was intended. 5th. The estate of the bankrupt to which his creditors might have recourse to satisfy their claims

must be actually diminished by the transfer. 6th. The transfer must have taken place within two months prior to the filing of the petition to enable the assignee to recover the property transferred.

II. *The established principles of law governing claims by the assignee seeking to avoid transfers by the bankrupt may be condensed into the following propositions:*

(A) The assignee takes the property of the bankrupt in the same plight and condition in which the bankrupt held it, subject to the same liens and equities, except as to fraudulent transfers made within the prohibited period anterior to the bankruptcy.

(B) A transfer of property or of its possession by the bankrupt made within the prohibited period is not void if made in pursuance of *a prior valid agreement*, supported by a valuable consideration, to absolutely and unconditionally appropriate or secure to the transferee the *specific property* so transferred, although it would, in the absence of such prior agreement, be a preference.

(C) An exchange of properties or securities of equal value within the prohibited time is not void.

(D) And under the amendment of June 22, 1874, "nothing "in § 35 (5129) contained shall be construed to invalidate any "loan of actual value, or the *security* therefor, made in good "faith."

(E) *Actual knowledge* of a fraudulent intent in the bankrupt must be brought home as a fact, not by a construction of legal fraud or fraud in law to the transferee.

(F) It has been held again and again that actual possession of property is not necessary to secure a creditor against the claim of an assignee in bankruptcy, provided the creditor had a lawful contract with the bankrupt, which, as between the parties, entitled him to the property as security.

If the amendment of June 22d, 1874, was not intended to cover other than those claims, where the mortgagee was in possession or the pledgee had the pledge, it was ineffectual for any purpose. The POSSESSION of a *bona fide* mortgagee or pledgee has always been unassailable.

"Security" in the contract of May 29th means a lawful, effec-

tive security. It imports whatever acts are essential to make it so.

The "*security*" in the skins provided for in the contract means an effective, enforceable security, one wholly independent of the good faith or solvency of Bayer. The careful enumeration proves this: "*All the skins*, whether green, in process of tanning, tanned, or tanned and finished, shall be "considered *as security* for the refunding with interest of all "the moneys advanced by Hauselt" (p. 51, fol. 186).

The position of Mr. Hauselt is that:

FIRST. By the contract of May 29th, the skins were to be *his security* for his advances on their purchase, from the time of purchase until sold by him, and as he did advance the money for the purchase of the skins, and as Bayer never had the right to sell the skins, which was exclusively in Hauselt, and as the contract did not give Bayer the right of possession, that the skins were at all times a lawful security to repay Hauselt's advances, no matter in whose physical custody, for the purpose of carrying out the contract, the skins might be. This position is unassailable unless the contract contravenes some principle of law, and it does not.

SECOND. If under the contract of May 29th actual physical possession of the skins be essential to perfect the security guaranteed him thereby, then he had the right to take such possession, as would in no way interfere with the performance of the contract; which possession was taken in the furtherance of the performance of the contract.

III. THE "SECURITY" GIVEN BY THE CONTRACT IS PROTECTED BY THE BANKRUPT ACT.

By § 5128, R. S., as amended by the Act of June 22d, 1874, Vol. 18, p. 180, if any person being insolvent, with a view to give a preference, makes any conveyance or transfer of *his* property, the person receiving such transfer or conveyance having reasonable cause to believe such person is insolvent and *knowing* that such conveyance is made in fraud of the provision of this title, the same shall be void, and the assignee may recover the property. "And nothing in this section shall be construed to invalidate

"any loan of actual value, or the security therefor, made in good "faith, upon a security therefor taken in good faith, on the "occasion of the making of said loan."

[*This amendment, though noted in the margin of the R. S. of 1878, is not incorporated in the text as it should be.*]

Security, "that which makes secure."
Burrill's Law Dict.

"Anything given as a pledge, as for the payment of a debt, "or the performance of a contract."
Worcester's Dict.

By the contract of May 29th, "it is further agreed that all "the skins, whether green, in process of tanning, tanned or "tanned and finished, shall be considered as SECURITY for the "refunding with interest of all the moneys advanced by Hau- "selt."

The word "security" in the contract has the same meaning as in the amendment to the Bankrupt Act and brings the contract within its protection.

Hauselt advanced the money in the actual purchase of the skins, and they were to be his "security" therefor, in every stage from green to finished. The skins were paid for direct by Hauselt in reliance upon the contract, which guaranteed him "*security*" in the skins. The "loan of actual value" and the "good faith," are apparent on the face of the transaction and they are nowhere questioned.

The contract was made in New York, and was to be performed in New York, so far as appears upon the face of it. If it was understood that the tanning was to be done at Tioga, Pa., it was a non-essential fact, and at most was a mere incident in the performance of a contract which began and was to end in New York.

IV. THE CHARGE THAT THE "SECURITY" GIVEN BY THE CONTRACT IN THE "*skins*" WAS NOTHING BUT A RELIANCE UPON THE PERSONAL PROMISE OF BAYER, WAS ERROR.

The learned Judge charged the jury that "Mr. Hauselt "could not, without the act of Mr. Bayer, obtain these

"skins from Mr. Bayer's possession; and he could not, "therefore, except with his co-operation, make available the "security which the possession of these skins would obviously "give him. Now, did he obtain any advantage by the obtaining "of possession? From what I stated, I ought to say to you "*that that writing gave him no security, except so far* "*as reliance upon the* GOOD FAITH *of Mr. Bayer would* "*give it to him;* but he had no right which could be en- "forced to the possession of this property, except by the volun- "tary act of Mr. Bayer. By stipulating, on the 6th of Novem- "ber, 1874, that the possession of this property should be turned "over to him before the time at which he was entitled to it un- "der the contract and by the further provision that he might "sell that property in any state, as might be to the best ad- "vantage of the parties toward converting it into money, and "to retain his claim out of that, he did obtain an advantage "over the other creditors of Mr. Bayer" (p. 56, fol. 204). Duly excepted to.

By the contract the skins were to be *security absolutely* and in *every stage* from green to finished. The reliance was not upon Bayer's good faith, but upon the contract which made the skins "security."

There certainly was nothing unlawful in this. The parties could protect themselves by any safeguards they deemed necessary. Hauselt deemed the skins necessary to his security, and they were made so. Wherein does the claim of the assignee rise superior to that of Bayer, to take from the contract its force and validity? Whatever was necessary to be done by either party to make Hauselt secure, that Hauselt might lawfully do, and compel Bayer to do, for that was the contract.

Gregory v Morris 96 U.S. 623

V. IF POSSESSION WAS ESSENTIAL TO HAUSELT TO GIVE HIM SECURITY IT WAS LAWFUL; IF NOT ESSENTIAL, IT WAS NOT A PREFERENCE.

It follows from the preceding point that if possession was essential to make the skins an effectual security in Hauselt's hands, then the agreement of November 6th was in no sense a preference under the Bankrupt Act. Bayer had agreed that the skins were, from green to finished state, to be Hauselt's

"*security*" for his advances; Bayer was bound legally and in good conscience to give effect to his contract by any means in his power. Bayer's estate had not been diminished by the purchase of the skins, nor would it be diminished by continuing the security in the skins for their purchase price as he had agreed to do. Bayer had not agreed to buy the skins nor had Hauselt agreed to sell them to him, nor had Bayer at any time the right to sell. His interest was confined to the *net proceeds*. The whole contract must be construed together; the intention of the parties must govern unless it contravenes some law.

VI. No agreement, valid as between the parties, the bankrupt and his transferee, can be assailed by the assignee in bankruptcy unless made within the time prohibited by the Act, with the intent to commit a fraud upon the Act, however invalid such agreement might be as to third parties.

Yet the Court charged, that by the agreement of Nov. 6th Hauselt "did obtain an advantage over the other creditors of "Mr. Bayer." Although the contract of May 29th gave Hauselt the skins as his security, this charge was error.

Held in Cook vs. Tullis, 18 Wal., 341, that the assignees "took the property of the bankrupt *subject to all legal and* "EQUITABLE *claims* of OTHERS. They were affected by all the EQUITIES WHICH could be urged against HIM," the bankrupt.

Citing Taylor vs. Plumer, 3 Maule and Selwyn, 562.

The rights of the assignees, "like the liens of judgment at "law, are subordinate to all prior liens, legal and equitable, upon "the property in question."

Gibson vs. Warden, 14 Wall., 248.

Since the trial of the case at bar, the decision of this Court in Stewart vs. Platt (*infra*) pointedly disposes of this case in favor of Hauselt.

In that case, not only was there no possession by Stewart of the chattels covered by his mortgage, but the mortgage was by *statute* declared to be void as to creditors and subsequent purchasers in good faith for non-filing in the resident county of the mortgagors, yet the mortgage was held good as against

their assignee in bankruptcy, though not against their judgment creditors whose claims were satisfied out of the proceeds of sale.

In the case at bar there is no statute which impairs the validity of the contract of May 29th.

Abstract of Stewart vs. Platt, 101 U. S. R., 731.

In 1869 Stewart leased the Lelands the Metropolitan Hotel; rent, $78,186, payable monthly; rent secured by mortgage; mortgage to be renewed yearly on chattels, and not being paid lessee empowered to take away chattels and apply same in satisfaction. Deed filed in New York, but not at *private* residences of Lelands. January, 1871, lessees made conveyance to Stewart of various properties. At this time there were unsatisfied mortgages on these. Stewart took it without assuming to pay, though subject to liens. February and March, 1871, creditors obtained judgment against lessees in Courts of New York and got execution, which were levied on property covered by chattel mortgages. Petition filed March 24th, 1871; lessees adjudged bankrupts on 1st April, 1871. Under order of Court Marshal took into custody property covered by chattel mortgage to Stewart. Inventoried at $47,252.92; under subsequent order of Court sold by auction for $43,569.31. After paying expenses, remained at date of decree in District Court, about $26,867.29 subject to distribution. This suit commenced in District Court, May 26th, 1871, by assignee of Lelands versus judgment creditors, Stewart and others. Bill besides seeking distribution of fund from sale assails as invalid chattel mortgage and real estate, and also a judgment obtained in February and March, 1871. Assignee claimed fund in Court, proceeds of sale of real estate for distribution among all creditors of bankrupt without any preference. Court below on final hearing held both chattel mortgage and conveyance void as against assignee, and ordered Stewart to convey real estate to assignee and adjudged liable for rents, &c., all judgments obtained within four months of bankruptcy void as against assignee, and subjected the proceeds of the property covered by the *chattel mortgage* to the expenses of the administration of the estate of the bankrupt, to the exclusion of Stewart's claim under his chattel mortgage.

This Court said, in reversing the judgment:

"In Yeatman vs. Savings Institution (95 U. S., 764) we held it " to be an established rule that 'except in cases of attachment,

" against the property of the bankrupt within a prescribed time " preceding the commencement of proceedings in bankruptcy, " and except in cases where the disposition of property by the " bankrupt is declared by law to be fraudulent and void, the " assignee takes the title subject to all equities, liens, or in- " cumbrances, whether created by operation of law or by act of " the bankrupt which existed against the property in the hands " of the bankrupt (Brown vs. Heathcote, 1 Atk., 160; " Mitchell vs. Winslow, 2 Story, 630; Gibson vs. Warden, 14 " Wall, 244; Cook vs. Tullis, 18 id., 332; Donaldson, Assignee " vs. Farwell, 93 U. S., 631; Jerome vs. McCarter, 94 id., 734). " He takes the property in the same 'plight and condition' " that the bankrupt held it (Winsor vs. McLennan, 2 Story, " 492)."

" The decree below is clearly in contravention of this rule. Al- " though the chattel mortgages, by reason of the failure to file " them in the proper place, were void, as against judgment " creditors they were valid and effective as between the mortgagor " and mortgagee, Lane vs. Lutz, 1 Keyes (N. Y.), 213; West- " cott vs. Gunn, 4 Duer (N. Y.), 107; Smith vs. Acker, 23 " Wend (N. Y.), 653. Suppose the mortgagors had not been " adjudged bankrupts and there had been no creditors, subse- " quent purchasers, or mortgagees in good faith to complain, " as they alone might, of the failure to file the mortgages " in the towns where the mortgagors resided. It cannot be " doubted that Stewart, in that event, could have enforced a " lien upon the mortgaged property in satisfaction of his claim " for rent. The assignee took the property subject to such equi- " ties, liens or incumbrances as would have affected had no ad- " judication in bankruptcy been made. While the rights of " creditors whose executions preceded the bankruptcy were " properly adjudged to be superior to any which passed to the " assignee by operation of law, the balance of the fund, after " satisfying those executions, belonged to the mortgagee, and " not to the assignee for the purposes of his trust. The latter, " representing general creditors, cannot dispute such claim, " since, had there been no adjudication, it could not have been " disputed by the mortgagors. *The assignee can assert, in be-* " *half of the general creditors, no claim to the proceeds of the* " *sale of the property which the bankrupts themselves could* " *not have asserted in a contest exclusively between them and*

" *their mortgagee. As between the mortgagors and the mort-*
" *gagees, the chattel mortgages were and are unimpeacha-*
" *ble for fraud, or upon any other ground recognized in the*
" *Bankrupt law.* It results that the Court below erred in di-
" recting the fees of the assignee's counsel to be paid out of the
" residue of the fund in Court remaining after the claims of
" execution creditors were satisfied. To that balance the appel-
" lants are entitled, without dimunition, to be applied in pay-
" ment of the rent remaining unpaid."

S. P. *In re* Dow., 6 N. B. R., 12.

VII. PHYSICAL POSSESSION OF THE PROPERTY NOT ESSENTIAL TO THE VALIDITY OF THE SECURITY AT THE TIME OF MAKING THE CONTRACT.

Actual physical possession of the property, specifically agreed to be given as security, need not be taken by the party at the time of making the advances, if they be made in good faith and in reliance upon the promise of the security of the specific property. Possession obtained at any time before the filing of the petition in bankruptcy, even by the bankrupt's act and with knowledge of his insolvency, will not be disturbed.

And the following charge of the Court was error, and was duly excepted to:

" I therefore instruct you that the legal effect of this agree-
" ment (of May 29th, 1874) was to invest the property of these
" skins in Mr. Bayer, and that in so far as the other provisions
" of the article they were understood and intended by the parties
" merely to provide security for Mr. Hauselt for the reimburse-
" ment of the advances which he agreed to make to Mr. Bayer.

" Now, further, the property of the skins being in Mr. Bayer,
" Mr. Hauselt had no right to the possession of these skins at
" any time while they were in the process of manufacture.

" He relied upon the stipulations of Mr. Bayer, and that was
" his only reliance—upon his good faith and compliance with
" the contract—that when the manufacture of the skins was
" completed Mr. Bayer should send them to him, put them in
" his possession for the purpose of sale and reimbursement, as
" stated in the contract.

In Hutton vs. Cruttwell, 1 E. & B., 20, Lord Campbell, C. J., says:

"There having been an agreement, before the money was "advanced, that the security should be given, and the money "having been advanced under this agreement, the deed is to "have the same effect with respect to creditors as if it had been "executed in April, 1851, instead of the month of June follow- "ing."

S. P. Gattman vs. Honea, 12 N. B. R., 493.
Burnhisel vs. Firman, 11 N. B. R., 505.
Ex parte Potts vs. Garwood, Crabbe, 477.

Wherever the creditor has a legal right to have a debt satisfied from the proceeds of property, or before the property can be otherwise disposed of, it is a *lien* on such property for the security of the debt.

Meeks vs. Whately, 10 Natl. Bank. R., 502.

"There is undoubtedly authority for the proposition that a "conveyance which would otherwise be a preference may be "supported if given in pursuance of a former valid agreement "(citing a number of cases). In the application of the princi- "ple it is immaterial whether there be simply an exchange "of legal securities, or whether *the security be given in pursu- "ance of a* PRIOR agreement, performance of which may be en- "forced in equity. The English cases are numerous, and "transactions of this kind have been frequently supported"— reviewing a number of them.

In re Jackson Iron Mfg. Co., 15 N. B. R., 400.
Cook vs. Tullis, 9 N. B. R., 439 (citing Taylor vs. Plumer, 3 Maule & Selwyn, 561); S.C., 18 Wal., 322.

In the case of Mitchell vs. Black (72 Mass., 100), cited with approval in 91 U. S., 114, (*infra*) the creditor took a bill of sale of the merchandise of his debtor, who was left in possession of the goods with liberty to sell. The bill of sale was by agreement unrecorded; held, that as between the parties, the bill of sale was valid under the State Insolvent Law, which was like the Bankrupt Act.

In Sawyer vs. Turpin, 91 U. S., 118, the bankrupts made an absolute conveyance to Turpin of a chattel interest in a leasehold as security of a debt of $27,839. This Court said:

"It was in substantial legal effect, though not in form, a mort- "gage. Having been executed more than four months before "the petition in bankruptcy was filed there was nothing in the

"case to show it was invalid. True it was not recorded; and "it may be doubted whether it was admissible to record. True "no possession was taken under it by the vendee, *but for neither "of these reasons was it the less operative between the parties.* "It might not have been a protection against attaching credi- "tors, if there had been any; but there was none."

S. P. *In re* Barman, 14 N. B. R., 125.

VIII. A VOID AGREEMENT MADE IN FURTHERANCE OF AND NOT AS A SUBSTITUTE FOR A VALID AGREEMENT HAS NO EFFECT UPON THE LATTER.

Under the decision of this Court in Avery vs. Hackley, 20 Wal., 407, the two main points of the case at bar have been determined in favor of Hauselt.

FIRST. That the agreement of November 6th was not intended to, and did not in fact give Hauselt any greater right over or interest in the skins than he was entitled to under the contract of May 29—although it unquestionably gave Hauselt possession of Bayer's tannery and the materials necessary for tanning, if any there were, which was not shown. The only interest which Bayer had in the skins at any time was in the net proceeds of sale, and the case shows there were none; on the contrary there was a deficiency of over $13,000 above Hauselt's advances.

SECOND. If the agreement of November 6th be void, as it was made in *furtherance* of and *not in cancellation* of the contract of May 29, that agreement stands unaffected by the one of November 6th.

An unsubstantial distinction may be drawn between Avery vs. Hackley and the case at bar, in that in the former case the possession of and right of possession to the logs was in Hackley; in other words, the mortgagee was in possession. But in the case at bar the possession of the skins is nowhere given to Bayer, the bankrupt. Charles Korn is to do the tanning and must have actual physical possession; at most Bayer had but a qualified possession—*it was possession for the purpose of tanning;* he never had the right to sell or pledge the skins, and any one who loaned or purchased with knowledge of Hauselt's claim would not be protected by alleging title through Bayer, for a sale by Bayer would have been a conversion. In Avery vs. Hack-

ley the assignee might have obtained the logs upon tendering the advances, which he failed to do. So did the assignee here. But it is questionable whether by so doing the assignee could have deprived Hauselt of his exclusive right to all the "Korn skins."

IX. SECURITY.

But there is still another answer which is conclusive. Since the bill of sale in Avery vs. Hackley, and before the contract of November 6th, in the case at bar, § 35 of the Bankrupt Act has been amended by § 11, Chap. 390, L. 1874, V. 18, p. 180. Approved June 22, 1874.

"And nothing in said Section 35 shall be construed to invali-
"date any loan of actual value or the *security* therefor, made
"in good faith, upon a security therefor, taken in good faith on
"the occasion of the making of said loan."

All Hauselt asks is that effect be given to this clause.

The Court charged the other way:

"If you believe the evidence—and it is not to be doubted, be-
"cause it is in writing, so far as this question is concerned—
"there was an arrangement, there was a transfer of this prop-
"erty within the meaning of the Bankrupt Law, by which the
"creditor to whom the transfer was made obtained the means
"of paying his claim, which he would not have had without
"such transfer and procurement of possession. The necessary
"effect of this arrangement was to give Mr. Hauselt this prefer-
"ential advantage over the other creditors, and it was a
"preference within the meaning of the Bankrupt Law."

X. THERE WAS NO INTENT TO COMMIT A FRAUD ON THE BANKRUPT ACT.

"Who shall arraign him in the court of conscience. If then
"it was forbidden neither by the common law nor by the
"statute of the State, nor by the highest sense of honor, it must
"be made to appear clearly that it is void under the section of the
"bankrupt law which we have quoted, or else it must stand."

Barbour vs. Priest, 103 U. S., 295.

In the case just cited the bankrupt had used the trust funds in his hands belonging to Mrs. Barbour and her children, and with the gulf of bankruptcy before him he secured this debt by mortgage, although he had made no promise at the time of the receipt of the trust moneys to give any specific or even general security therefor. The mortgages were upheld. It was not shown that Mrs. Barbour knew the bankrupt to have been insolvent. But suppose Colby, the bankrupt, had at the time of receiving the trust moneys promised to secure them by mortgage upon specified pieces of property, and not having done so he should on the verge of bankruptcy have then executed the mortgages with the knowledge of the grantee that he was insolvent, would the conveyance have been any the less valid? Certainly not. The knowledge of the transferee is of an intent to commit a fraud upon the act, and that knowledge does not exist if the bankrupt is simply carrying out a contract which he was in equity compellable to do. The mere delay of the bankrupt to give the specified security agreed to be given cannot work a forfeiture of that security when given.

XI. HAUSELT MUST BE PROVED TO HAVE KNOWN THAT FRAUD WAS INTENDED.

"But it is proper to call attention to the fact that the "statute as it now stands (§ 5 128 U. S. R. S.) requires "the assignee in bankruptcy to establish that the person "claiming under the assignment which he seeks to avoid, "received it not only with 'reasonable cause to believe' the as- "signee insolvent, but that he received it *knowing* that such as- "signment was made in fraud of the act. * * * "To 'know' is something different from 'belief' and we may "infer from the change in phraseology that the statute imposed "a liability only upon proof of that full and perfect assurance "which amounts to *actual knowledge*."

Guernsey vs. Miller, 80 N. Y. 184.

The Court below made knowledge of Bayer's *insolvency* conclusive evidence of knowledge of an intent to commit a fraud upon the act, while the Bankrupt Act requires each to be established as independent propositions.

The following portion of the charge was duly excepted to:

"In the next place, it must appear that the preference was "taken with the object of defeating the Bankrupt Law. Now, "gentlemen of the jury, independently of the evidence tending "to show positively the existence of such intent on the part of "the parties to such a transaction, where an arrangement is "made between the debtor and the creditor, the necessary and "only result of which is to give that security, why, according "to every rule of common sense, the parties are presumed to "have intended the result to follow. * * * It is not neces-"sary that you should come to the conclusion that either of the "parties here were influenced by corrupt intent. *Indeed, there "is not the slightest evidence which would justify such an "implication against either of them.*"

XII. The Object of the Bankrupt Act.

"The object of the bankrupt laws—the fundamental object "—is to secure an equal distribution of the property of the "bankrupt among all the creditors, and any arrangement by "which that object is defeated is a preference within the mean-"ing of the bankrupt law.

Duly excepted to (fol. 210, p. 57.)

Because the proposition contained in the charge includes transfers which are not preferential—to wit, the one in suit.

XIII. The Intent of the Bankrupt.

Q. In making the agreement of November 6th, did you have any intent to commit a fraud upon the Bankrupt Act? Question excluded. Defendant excepts—(fols. 121-129).

This was error; a similar ruling was reversed in Seymour vs. Wilson, 14 N. Y., 568.

By the ruling of the Court a bankrupt may commit a fraud upon the Bankrupt Act with a contrary intent, or his intent is not essential to be proved.

XIV. The judgment should be reversed and a judgment rendered for the plaintiffs in error.

Lewis Sanders,
Counsel for Plaintiffs in Error.

Hauselt was to advance money to Bayer for the purchase of veal and kip skins, to be tanned, curried and finished by Charles Korn.

There was then a bailment of the skins to Korn, to be tanned by him. "When the identical thing delivered, although in an "altered form, is to be restored, the contract is one of bailment, "and the title to the property is not changed."

Mallory vs. Willis, 4 N. Y., 85.
Foster vs. Pettibone, 7 N. Y., 435.

Bayer agreed to send ALL the skins so tanned and finished by Korn exclusively to Hauselt, who was, moreover, the sole agent for the sale of the "Korn skin."

Hauselt was to sell the skins at best market price at a commission of 6 %. Bayer was to have all the proceeds of sales after deducting the commissions and advances by Hauselt.

ALL of the skins, green, tanning, tanned and finished, were to be security for the refunding, with interest, to Hauselt of his advances.

The possession of the skins under the contract for the purpose, and while in the process of tanning, &c., was in Korn as bailee; after that the possession was to be in Hauselt for the purposes of sale. All of the skins in question were in the possession of Korn, in process of tanning, on November 7th, 1874, when Hauselt took possession of Bayer's tannery and advanced the money necessary to complete their tanning and finishing. The confusion, in the mind of the Court, below seemed to arise from the fact that Korn was using Bayer's tannery for the purpose of doing the tanning when Hauselt took possession.

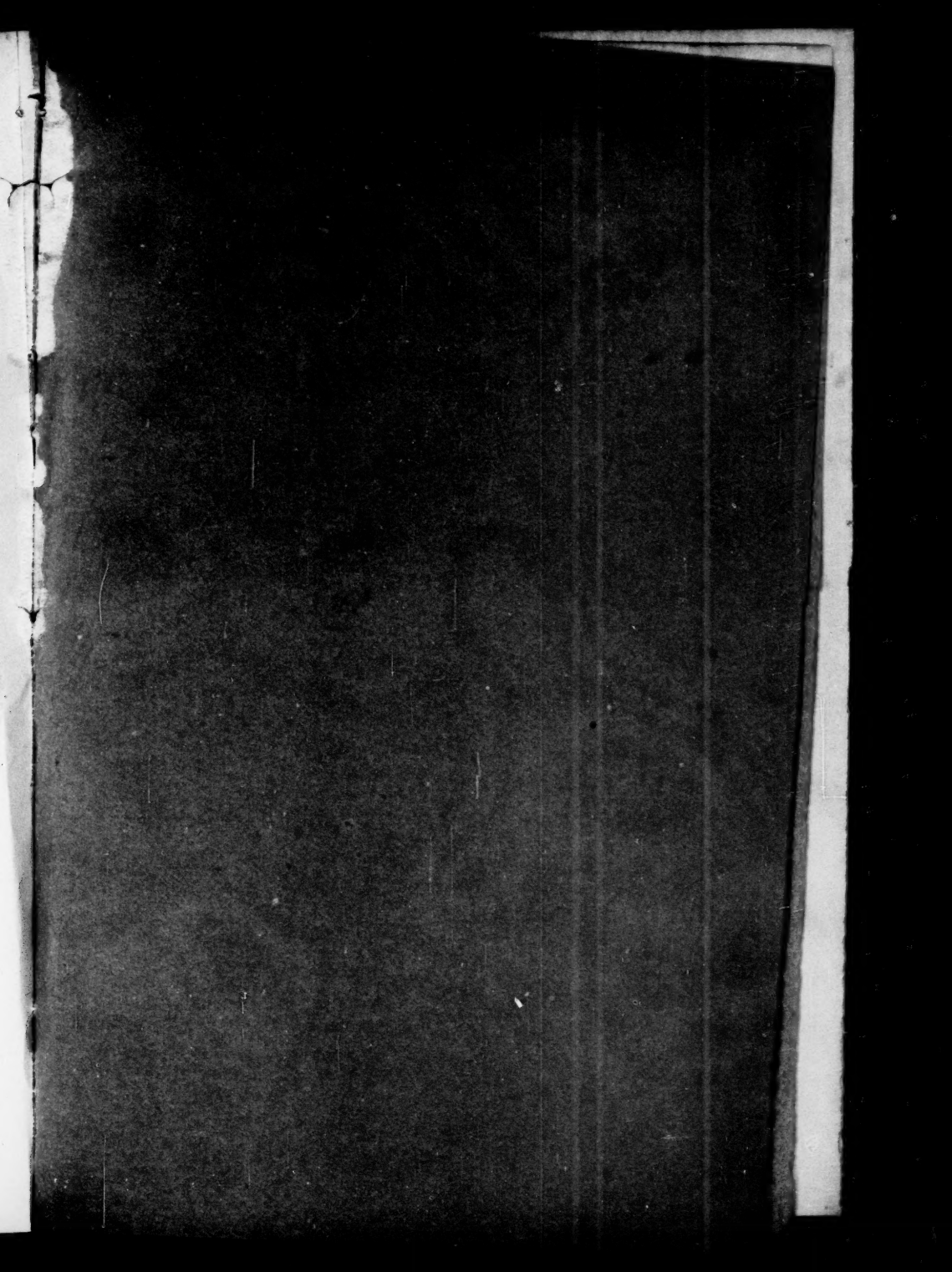
The excluded agreement between Bayer and Korn (fols. 219 to 223) shows that Korn was the tanner; that the skins were to be done to the full and entire satisfaction of Mr. Charles Hauselt, who advanced the money for the purchase of the skins, and "to whom the finished skins *shall be* consigned for sale" (fol. 220). The agreement of November 6th, 1874, did not deprive Bayer of either the actual possession of the skins, for that was in Korn, or of the future right of possession, for, upon the finishing of the skins, that immediately vested in Hauselt, or of the right of sale, for that was exclusively in Hauselt, or of the right to the net proceeds, for that was secured to him by the

agreement of November 6th, with a guarantee from Hauselt in addition, or of the net proceeds, for there were none.

But in addition to this, the skins were at all times to be Hauselt's security for the return of his advances with interest.

The distinction between the actual case at bar and the supposed case submitted to the jury, is made very apparent by contrasting it with a recent case in this Court.

Case at Bar.	Powder Company vs. Burkhardt, 7 Otto., 110.
Harrison is only an assignee in bankruptcy.	Burkhardt was an attaching creditor.
Hauselt's advances were to be and were used in the purchase of the very skins in question.	The Powder Company made advances generally.
Korn was the bailee for the tanning of the skins, not Bayer.	Dittmar was himself the manufacturer.
The specific skins bought were to be sent to Hauselt for sale.	The Powder Company was only to receive an equivalent in "dualin" for the money advanced.
Hauselt was in possession at the time of the bankruptcy, and of suing out the replevin writ.	The Powder Company never was in possession.
Hauselt had exclusive power of sale—Bayer only an interest in the net proceeds.	The Powder Company had the right to sell "dualin" and a half interest in the profits, but had no interest in the original materials bought.
Hauselt had, by the contract of May 29th, 1874, a continuous security in the skins until they were sold by him.	The Powder Company had no security beyond the personal obligation of Dittmar to ship to it an equivalent quantity of "dualin" for its advances.



SUPREME COURT OF THE UNITED STATES.

No. 253.

CHARLES HAUSELT AND CHARLES KORN, PLAINTIFFS IN ERROR,

vs.

JEFFERSON HARRISON, ASSIGNEE IN BANKRUPTCY OF EDWARD BAYER, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

STATEMENT AND BRIEF OF ARGUMENT FOR DEFENDANT IN ERROR.

M. F. ELLIOTT,
H. C. PARSONS,
Attorneys for Defendant in Error.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

STATEMENT AND BRIEF OF ARGUMENT FOR DEFENDANT IN ERROR.

In 1874 Edward Bayer owned and was operating a tannery at Tioga, Pennsylvania. On the 29th of May, of that year, he entered into a contract with Charles Hauselt, by the terms of which Hauselt agreed to furnish him money to purchase skins, and Bayer agreed that after he had converted them into leather at his tannery at Tioga he would ship the leather to Hauselt at New York, to be sold on commission, and that Hauselt should have the right to retain from the proceeds of the sales of the leather the amount of money he had loaned to Bayer, together with his commission for sales, and pay over to Bayer the balance. Hauselt furnished money to Bayer under the contract, and Bayer purchased a large quantity of veal and kip skins, shipped them to his tannery and began tanning them.

In conducting the business of tanning Bayer became indebted to a large amount for bark and other materials and for the labor of men in his employ. In November, 1874, Bayer was hopelessly insolvent, and on the 5th and 6th of that month C. H. Seymour, his attorney, informed Hauselt's agents of that fact and that he had already prepared his petition in bankruptcy.

On the 6th of November, 1874, after Mr. Seymour had informed Hauselt's agent and attorney that Bayer was insolvent, Mr. Sanders, the attorney of Hauselt, drew the contract of 6th November, 1874,

and it was on that day executed by Bayer and T. H. Bourman, attorney for Charles Hauselt.

Mr. Seymour said to them, "Well, gentlemen, if you want to know, Mr. Bayer's papers are all executed, or his application is sworn to for the benefit of the bankrupt act." Mr. Sanders said, "Gentlemen, you will let me manage this now. I know all about it." He went on and drew this contract. [Record, page 22.]

Prior to this disclosure by Mr. Seymour, Bourman, the agent, and Sanders, the attorney of Hauselt, were insisting that Bayer should execute a bill of sale of the skins at the tannery. Mr. Seymour in his testimony, page 21, says, "Mr. Bourman came, and my recollec-
"tion is that there was no more besides Mr. Sanders, the attorney.
"Mr. Sanders presented there a contract to be executed, *a bill of sale*,
"[defendant's counsel object]. A bill of sale of skins at the tannery
"there, and read it over to him. I said, Mr. Sanders, if you desire upon
"my stating to you, perhaps as you want to know in relation to this
"thing, if you then desire Mr. Bayer to execute this contract, I would
"advise him to do so."

On the 7th November, the day following the execution of the contract, the agents of Hauselt went from New York to Tioga, Pennsylvania, and took possession of the tannery, all skins tanned and in process of tanning, and all materials on hand for conducting the business.

Possession was taken in pursuance of the contract of November 6, 1874, as appears by facts admitted on the trial of the case.

"5. That Charles Hauselt by his agent took possession of the
"property mentioned in the contract dated November 6, 1874, *in*
"*pursuance of said contract.*" [Record, page 14.]

Up to that time the possession of the skins had been exclusively in Bayer. He purchased them in his own name, shipped them to his tannery, over which he had the entire control, and was engaged in tanning them at the time he entered into the contract of November 6th.

The counsel for plaintiff in error, in his statement of the case, says that the possession of the skins was at no time in Bayer. They certainly were not in Hauselt's possession, and if they were not in Bayer's we are curious to know how Hauselt took possession of them in pursuance of the contract of November 6th between him and Bayer, as he admitted on the trial he did.

Korn was at work for Bayer on a salary and superintended a portion of the men employed in the business; but he had no possession of the tannery or skins therein or control over the business Bayer was conducting, as against Bayer. The skins were in Bayer's actual

custody and he was tanning them, and these facts leave a strong impression on our minds that they were in his possession.

Hauselt used the materials on hand, finished a portion of said skins, shipped them to New York and disposed of them for his own benefit.

On the 10th of November, 1874, Bayer filed his petition in bankruptcy, and was on the 18th of January, 1875, adjudged a bankrupt, and Jefferson Harrison, the plaintiff below and defendant in error, was duly appointed assignee of his estate.

On the 19th day of February, 1875, Harrison made a demand on Hauselt for the skins remaining at the tannery, and on the refusal of Hauselt to deliver them he brought this action.

Under the charge of the Court the jury rendered a verdict in favor of the assignee for the recovery of 7,900 skins, and assessed the value at two dollars a skin.

As stated by the counsel for plaintiff in error, the assignee's right to replevy the skins turns upon the construction to be given the two agreements between Bayer and Hauselt, bearing date May 29 and November 6, 1874.

The contract to be first considered is that of May 29, 1874. By its terms what interest in, or claim upon the skins to be thereafter purchased by Bayer, did Hauselt acquire? He agreed to loan money to Bayer to enable him to purchase skins. Bayer purchased skins with his own money, for the money loaned to him became his by the loan; the skins were purchased in Bayer's name, as the contract contemplated they should be, and Bayer simply agreed that after he had, at his own expense, tanned them he would send them to Hauselt to be sold, not for Hauselt's benefit, but his own. It is beyond question, then, that the skins belonged to Bayer, and Hauselt had no title to them.

It is claimed that although the title to the skins was in Bayer Hauselt had some sort of lien upon them, which he could assert against the assignee by virtue of the following clause in the contract: "And it is further agreed that all the skins, whether green, in pro-"cess of tanning, tanned, or tanned and finished, shall be considered "as security for the refunding, with interest, of all the moneys ad-"vanced by the party of the second part, and that all the skins shall "be insured for their full value in good companies only."

Considering this clause of the contract in connection with all the other provisions of the contract, how under the law was Hauselt to have any enforceable security upon the skins? When the contract was entered into not a skin had been purchased; the parties were not contracting with reference to any property that either then owned;

they stipulated that when skins should be purchased with the money loaned Bayer should not only have the title, but possession, and should, by a large outlay of his own means not advanced by Hauselt, convert the green skins into leather. Absolute title and dominion over the skins was at least to remain in Bayer until they were converted into the manufactured article. There was no present, nor any agreement for a future sale, mortgage, or pledge of the skins; and without any of these how could they be any real security for the advances of money which Hauselt made to Bayer? Simply stating that skins to be purchased in the future shall be deemed security, does not constitute them such. If the agreement had been that the skins should be purchased in the name of Hauselt, or that when purchased Bayer should execute and deliver to Hauselt a bill of sale or mortgage, there would have been something upon which to base an argument that Hauselt had such a lien upon the skins as justified his seizure of them together with the tannery on the 7th of November. It is difficult to see, however, how at the time the contract was executed there could have been a mortgage or pledge of skins not yet purchased.

Bayer had the title, possession and the right of possession, and under the law of Pennsylvania, where the skins were to be tanned and where they were situated at the time Hauselt took possession of them, he had no such lien upon them as he could enforce as between Bayer and himself.

"A contract by a merchant to deliver hides to a tanner, to be "charged at cost and five per cent. commission and interest after six "months, and when tanned to be returned to the merchant to be sold "by him, and out of the proceeds of the sale the first cost and five "per cent. to be deducted and the balance to be paid to the manufac- "turer, is such a sale as will subject the hides to levy and sale as the "property of the manufacturer. The law will allow of no device to "elude the principle which forbids a lien to be created on chattels "*as a security separate from the possession.*"

Jenkins vs. Eichelberger, 4 Watts, page 121.

"It was agreed by parol that C was to receive hides from P at cur- "rent prices, tan them, return the leather to P, and after deducting "the price of the hides, commission, interest and current expenses all "that the leather would command was to be credited to C. *Held* "that this was a sale to C and not a bailment."

Prichett et al. vs. Cook, 62 Pennsylvania State Reports, page 225.

"Defendant was indebted to plaintiff. He pointed out molasses "consisting of 400 hogsheads and agreed that the molasses pointed "out should stand as security for the debt. He agreed to send his "creditor the rum to be destilled from the molasses, to be sold by the "creditor and the proceeds applied to the debt. Held that under the "arrangement the plaintiff (creditor) could not recover the molasses "in replevin as there was no delivery of possession or pawn."

Smyth vs. Craig, 3 Watts & Sergeants, page 14.

If, instead of this agreement of the 29th of May, Bayer had agreed to sell the skins in an unfinished state, to be delivered to Hauselt when finished, the purchase price to be applied in liquidation of the indebtedness of Bayer, the contract would have been executory, and under the adjudications in Pennsylvania Hauselt would have had no property in the skins which he could have enforced against Bayer.

"An agreement to sell a chattel in an unfinished state, to be deliv- "ered at a future time, is an *executory* contract, for a breach of which "an action lies; *but it does not pass the property in the chattel.*"

Pritchett vs. Jones, 4 Rawle Reports, page 260.

"Sale of logs to be delivered from timber thereafter to be cut does "not pass title or property in the logs."

Swift et al. vs. Morrison, 2 Weekly Notes of Cases, page 699 (Supreme Court of Pennsylvania.)

The simple statement in the contract that the skins, whether green or manufactured into leather, shall be considered as security does not of itself give Hauselt any enforceable claims on the skins in the hands of Bayer. No apt words are employed in the contract to constitute a mortgage, pledge, or any kind of enforceable lien, and Hauselt is compelled by the terms of the agreement to rely on the responsibility of Bayer.

The case of Stuart vs. Platt, 101 U. S. R., 731, is cited by the counsel for plaintiff in error and relied on as disposing of this case in his favor. If we are correct in the position we take, that by the contract of the 29th of May Hauselt acquired no interest in or lien upon the skins, which he could enforce against Bayer, then the case of Stewart vs. Platt has little if any bearing on any question in this case. Stewart held a mortgage upon the personal property of the Lelands, situate in the Metropolitan Hotel, to secure the payment of a specific sum, with the right to enforce it at a time stated. It was such a mortgage as the laws of the State of New York recognize and provide the manner of its enforcement, and it was to have been expected that

this Court would have held that such a mortgage was enforceable between the parties and therefore valid as against Leland's assignee.

Chattel mortgages are not recognized in Pennslyvania where the skins were to be tanned and converted into leather; but if they were to be held valid as between the parties in that State, does the language employed in the contract of the 29th of May amount to a mortgage of the skins in controversy? The contract contains no words of transfer, absolutely or conditionally, and no amount is named for the payment of which the skins are to be considered as security, and it is distinctly provided that Bayer is to have the exclusive possession until they are converted into a manufactured article which would prevent the enforcement of any lien otherwise created. Is it possible that Bayer by the words employed in the contract created a lien upon the leather which he hoped to manufacture from skins he intended to purchase, and thus on the 29th of May reach into the future and bind property he should acquire title too through the labor of workmen and money advanced him to carry on his business by other than the mortgagee? As well might a person mortgage the shawl to be manufactured from wool to be grown on the goat his creditor advanced money to purchase.

What had Hauselt a mortgage or lien upon at the time the contract was executed? No skins had been purchased at that time. On the 29th of May, Hauselt had a lien upon nothing; the next day perhaps Bayer purchases a hundred skins, and the contract becomes a mortgage on a hundred skins, and so on from time to time, until finally, just before Bayer is adjudged a bankrupt, it has assumed enormous proportions, and from a harmless bit of paper covering not a single skin it enfolds securely thousands of sides of finished or partly finished leather, representing not only the money advanced by Hauselt to purchase green skins, but the labor of workmen and money advanced by Bayer's other creditors to purchase bark and other materials.

"A mortgage of personal property cannot apply to goods not in "existence or not capable of being identified at the time of its execu-"tion."

20 Barbour (N. Y.), 37.

7 Wisconsin Reports, 159.

If the view we take of the contract of May 29 is correct, then it follows that Hauselt acquired the possession and right to sell the skins in any State and apply the proceeds to the liquidation of Bayer's indebtedness to him only under the contract of November 6, 1874. The admission of Hauselt made for the purpose of being read on the trial

of this case in the Circuit Court settles the question that the possession of the tannery and skins was taken under the contract of November 6.

"5. That Charles Hauselt, by his agent, took possession of the "property mentioned in the contract dated November 6th, 1874, *in "pursuance of said contract.*"

By this contract Hauselt obtained a transfer of nearly all the personal property of Bayer, by which he obtained the means of paying his claim, which he would not have had without such transfer and possession. The necessary effect of this contract was to give Hauselt a preference over the other creditors of Bayer within the meaning of the bankrupt law. Without this contract Hauselt could not have obtained the possession of the skins as against Bayer himself at any time, certainly not until the time arrived when, by the terms of the contract of 29th May, Bayer agreed to ship the finished leather to New York to be sold on commission. By that contract he was never to have possession of the skins at the tannery.

It is undoubtedly true that if the agreement of November 6 was not intended to, and did not in fact, give Hauselt any greater right over the skins than he was entitled to under the contract of May 29, Hauselt did not by virtue of the agreement of November 6 obtain such a preference over the other creditors of Bayer as the bankrupt law would avoid, for the simple reason that he acquired nothing under it whatever. It should be borne in mind that Hauselt admitted at the trial of this case that he did take possession of the skins in pursuance of said contract, a very important thing which he could not have done under the contract of the 29th of May.

We are of the opinion that if the contract of November 6, did not give Hauselt any greater right over the skins than the contract of May 29, then he took posession of the skins in controversy without shadow of right, and the assignee was entitled to them or their value in this action.

The agreement of November 6 was undoubtedly procured by Hauselt for the purpose of obtaining greater security than he had prior to its execution. His attorney, Mr. Sanders, in company with Bourman, his agent, undertook in the first place, on November 6, to procure a *bill of sale* from Bayer. Were they endeavoring to obtain just what Hauselt had before, or something additional? Mr. Seymour says: "Mr. Sanders presented them a contract to be executed, a bill of sale."

It seems to us apparent that by the contract of November 6 Bayer did give a preference to Hauselt over his other creditors, and that the Court below was right in so charging the jury.

At the time this contract was executed Bayer was unquestionably insolvent, and the jury found that Hauselt knew that fact. Mr. Seymour swore that he informed the agent and attorney of Hauselt that he had then in his possession the petition in bankruptcy of Mr. Bayer, signed and sworn too. The attorney of Hauselt swore that Mr. Seymour did not so inform him, and the Court said to the jury: "If "you believe the testimony of Mr. Seymour, why there is an end to "any controversy on the subject, if there were no other testimony in "the cause than his. Then, if you accept the testimony of Mr. Sanders as true, your conclusion would be that such fact is not made "out by satisfactory evidence." [Record, page 49.]

The jury also found, under the instructions of the Court, that the preference was taken with the object of defeating the bankrupt law. The Court said: "If, from all the evidence, you are satisfied that "there was this intent animating both these parties, Mr. Bayer on the "one hand and Mr. Hauselt, by his agent, on the other, why then you "will regard that position as satisfactorily established." [Record, page 48.]

Much stress is placed by counsel for plaintiff in error upon the fact that the Court below did not charge the jury that it was necessary that the plaintiff should prove that Hauselt knew at the time he procured the contract of November 6 and took possession of the skins, that a fraud upon the bankrupt act was intended. It is true that the Court did not so charge in words, but they did so state several times in substance.

The Court instructed the jury that they must be satisfied that Bayer made a transfer of the property or gave security by which a preference was obtained by the creditor. That it must appear that the preference was taken with the object of defeating the bankrupt law; that Bayer was insolvent, and that the creditor knew or had reasonable cause to believe that to be the fact. If these four propositions were established by evidence, they constituted what the law declares to be a fraud upon the bankrupt act, and Hauselt is presumed to know what the law has declared to be a fraud. A man is presumed to know what the law has declared to be the legal consequence of his acts. It is difficult to see how the Court could have been more explicit, as will appear from the following extract from the charge.

"But Mr. Bayer made this transfer of his property as evidenced "by the writing of the 6th of November, 1874, and a preference re"sulted from that, as I have already instructed, as the necessary e"fect of such arrangement; and if this transfer was made by M"Bayer and taken by Mr. Hauselt with the intent to defeat the o"erations of the bankrupt law, that is, to obtain a payment of

"whole of his debt and thus the withdrawal of the means necessary "to that end from an equal distribution among the other creditors, "and if at the time such preference was given Mr. Bayer was insol- "vent, and Mr. Hauselt then knew, or his agent knew, or had reas- "onable cause to believe, that such was the case, then I say all the "conditions required by the bankrupt law to make this transaction "legally fraudulent have been established, and your verdict should "be for the plaintiff. If, however, any one of them is insufficiently "proved, why the plaintiff's case must fail." [Record, page 49.]

"Every man is presumed to know the law, and he is bound to "know what are the legal results of his acts. His mere private inten- "tion cannot overcome the legal intention and purport of his acts."

Arnold vs. Maynard, 2 Story, page 349.

Morse vs. Godfrey, 3 Story, page 364.

"Every one is presumed to intend what is the necessary and una- "voidable consequence of his acts."

Haughey vs. Albin, 2 B. R., 399.

Foster vs. Hackley & Sons, 2 B. R., 406.

"The intentions of the parties are to be judged by the legal effect "of their acts."

Traders National Bank vs Campbell, 14 Wall, 87.

The general legal proposition is true that when a person does a positive act, the consequences of which he knows beforehand, he must be held to intend their consequences.

Wilson vs. City Bank, 17 Wall, 473.

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